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RESEARCH PAPER

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Declaration

I, **XOLANI NYALI**, do hereby declare that this research is the result and product of my own original work and effort and that to the best of my understanding, knowledge and belief, it has not previously, in its entirety, partially or otherwise, been submitted to any other university, college, institution or board for the award of a degree or diploma. Works of others cited or referred to herein, are accordingly and respectfully acknowledged. Errors or omissions, if any, shall remain my sole responsibility.

Signed

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Dated

This research paper has been submitted  ation with my approval as the designated supervisor.

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Signed

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Key Words

Public - private partnership, Southern African Development Community (SADC), SADC Trade Protocol (TP), regional integration, trade, Treaty establishing the SADC (SADC Treaty), Regional Indicative Strategic Development Plan (RISDP), SADC Common Agenda, SADC Protocol on Finance and Investment, Regional Infrastructure Plan, Programme for Infrastructure Development in Africa (PIDA)



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CHAPTER 1

AN ANALYSIS OF THE ROLE OF PUBLIC – PRIVATE PARTNERSHIPS IN REGIONAL INTEGRATION INITIATIVES IN SOUTHERN AFRICA

1.1 Introduction

This chapter introduces and provides background information on the issue being researched. Notably, this chapter will address the reason that this research is being undertaken by providing the statistics underpinning regional trade in Southern Africa. Finally, this chapter will look at how the arguments presented in this research paper will be substantiated in the various chapters. Critical in this latter endeavour will be the sources that this research paper relies on and the methodology that it adopts.

1.2 Problem Statement

The Southern African Development  Free Trade Area (SADC FTA) was officially launched at the 28th SADC Summit in August 2008 by 11 of the 15 SADC Member States against the backdrop of the global economic crisis.¹ By January of 2008, about 85% of goods from the participating Member States attained zero duty and a Common Tariff System was applied to the import of goods from non-Member States. Further, the SADC Protocol on Trade in Services was developed and signed in August, 2012 as a step towards achieving a Free Trade Area (FTA) in services. Prior to these milestones, the Trade Protocol (TP) had been developed and signed in 1996 with the Regional Indicative Strategic Development Plan (RISDP) developed and signed in 2003. All of these policy moves resulted in the SADC Common Agenda.²

The challenge, and opportunity, presented by the global financial and economic crisis is that countries of the South needed to diversify from their traditional trading partners in Europe

¹ Bua News ‘SADC launches free trade area’, available at <http://www.southafrica.info/africa/sadc-fta.htm> (accessed 21 March 2013).

² SADC ‘Integration Milestones’, available at <http://www.sadc.int/about-sadc/overview/sadc-common-agenda/> (accessed 21 March 2013). The SADC Common Agenda refers to the set of foundational principles and values that guide the SADC’s regional integration agenda. The SADC Common Agenda is contained in Article 5 of the SADC Treaty (as amended, 2009), as well as in the Review of Operations of SADC Institutions.

and North America.³ As Africa is projected to have a population of 2.191 billion people by 2050, with 67.327 million of these in Southern Africa,⁴ the scope and opportunity for intra-regional trade in Southern Africa is therefore becoming an attractive proposition. Due to the challenge of infrastructure, intra-regional trade in Southern Africa is lagging behind the trade between Southern African countries and their traditional trading partners – even during the global economic and financial crisis.⁵ It is argued that a lack of robust intra-regional trade translates to consumers in Southern Africa (i) having access to few competing products and (ii) paying higher prices than their peers in more developed economies. The main driver of this inequity is that markets are restricted to national markets and competition is therefore also national in scope. The notion of comparative advantage in the region does not hold true.⁶ Further, companies’ accretion of market share or growth (organic or through acquisitions) is hampered due to varying regulatory regimes and market requirements.⁷ In the end, both consumers and the private sector operate under sub-optimum trading conditions at the regional level.

The challenge of regional integration is the lack of sufficient hard⁸ and soft⁹ infrastructure which will be an obstacle to seamless business relations in Southern Africa. That regional integration in Africa has only been undertaken by bureaucrats and the role and potential of public-private partnerships¹⁰ has received scant or poor attention.¹¹



³ The Economic Times ‘Changing global trade patterns’, available at http://articles.economictimes.indiatimes.com/2010-05-14/news/27606822_1_global-trade-manufacturing-exports-world-trade (accessed 21 March 2013).

⁴ United Nations Department of Social and Economic Affairs: Population Division – Population Estimates and Projections Section, available at <http://esa.un.org/unpd/wpp/Excel-Data/population.htm> (accessed on 21 March 2013).

⁵ UNCTAD ‘Economic Development in Africa Report 2013’ *Intra-African trade: Unlocking private sector dynamism* (4).

⁶ Comparative advantage refers to the ability of a country to produce a particular good or service at a lower marginal and opportunity cost over another. Even if one country is more efficient in the production of all goods (absolute advantage in all goods) than the other, both countries will still gain by trading with each other, as long as they have different relative efficiencies.

⁷ H Jalilian, C Kirkpatrick and D Parker ‘The impact of regulation on economic growth in developing countries: A cross-country analysis’ (2006) 11 – 16, available at <https://dspace.lib.cranfield.ac.uk/bitstream/1826/1455/1/Impact%2520of%2520regulation-Economic%2520growth-March06.pdf> (accessed 21 March 2013).

⁸ Referring to tangible infrastructure like rail, roads, ports and air transport.

⁹ Referring to customs software and regulatory regimes.

¹⁰ The World Bank defines public-private partnerships as “arrangements, typically medium to long term, between the public and private sectors whereby some of the services that fall under the responsibilities of the public sector are provided by the private sector, with clear agreement on shared objectives for delivery of public infrastructure and/ or public services.” World Bank, “What are

This research paper, therefore, will focus on (i) the challenges and opportunities presented by hard infrastructure and (ii) the potential scope of public-private partnerships in alleviating such challenges and responding to the opportunities.

This research paper, as a secondary objective, cautions against missing an opportunity to advocate for the deployment of capital in a manner that benefits the region and gives sufficient returns to investors. Simply put, such a failure has the potential to derail the regional integration project in Southern Africa. This would translate to consumers and market participants being subjected to a finite market¹², less competition, higher prices¹³ and less innovation¹⁴.

In responding to the above analyses, this research paper undertakes a thorough study of the current legal framework and practices in SADC which allow for participation of the private sector in public-private partnerships. In this regard, this research paper will consider which between institutionalisation or the *ad hoc* participation of the private sector in public-private partnerships is a viable policy goal for the



1.3 Significance of the research

Southern Africa's regional trade landscape is characterised by inefficient and costly rules and cross-border trade procedures (for example, no standardised customs declarations or health standards for the export of meat products) due to poorly designed and implemented regional

Public Private Partnerships?" Available at <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships> (accessed 9 January 2014).

¹¹ United Nations Economic Commission for Africa (UNECA), 2006, "Assessing Regional Integration in Africa II: Rationalising Regional Economic Communities", Addis Ababa, UN Economic Commission for Africa at page 86, available at www.uneca.org (accessed 21 March 2013).

¹² The market will be restricted to a national market which is susceptible to domestic factors influencing either mortality or population growth.

¹³ Less competition and the absence of comparative advantage in the region will lead to higher prices. An attempt to increase intra-SADC trade under the prevailing regional trade conditions may marginally alleviate the problem but will not significantly affect it in light of the non-tariff barriers that exist.

¹⁴ Innovation will be limited to national markets and the prospects of creating synergies between high innovation and low innovation countries will be limited. In this regard, technology transfers in the region will be stifled.

integration initiatives.¹⁵ The problem is compounded by the lack of investment in hard infrastructure to serve as an enabler of regional integration.¹⁶

It is argued that this lack of investment in infrastructure ultimately results in higher prices for consumers in Southern Africa as cross border traders have to factor in duplicate customs costs, higher vehicle maintenance costs as well waiting time at border posts. Thus, the opportunities and challenges presented by public-private partnerships have to be properly understood and resolved to allow investors¹⁷ to undertake these public-private partnerships in a predictable and stable environment.

Notably, private sector players, i.e. investors are a useful feedback conduit to policymakers on the efficacy or shortcomings of the implementation (and perhaps design) of regional integration initiatives as they are market players.¹⁸ An effective feedback mechanism therefore cannot be implemented if it excludes the most significant market player: the private sector. As a sector that is interested in maximising profit and cutting unnecessary costs, this paper argues that the private sector has enough incentive to enter into public-private partnerships which open up new markets. Equally, policymakers have enough incentive to partner with the investment community as they (i) do not have the necessary funds to self-fund large infrastructure projects and (ii) want to improve consumer welfare in the region. The scope of partnership, however, needs to be broadened from the traditional investor role to one of partnership which includes policy formulation and implementation.



¹⁵ T Dinka and W.1 Kennes 'Africa's Regional Integration Arrangements: History and Challenges' (2007) *ECDPM Discussion Paper 74*, Chapter 3, available at http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index2?readform&http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/0aff1ee6dde15146c12579ce004774b2?OpenDocument (accessed 14 August 2013)

¹⁶ T Dinka and W.1 Kennes 'Africa's Regional Integration Arrangements: History and Challenges' (2007) *ECDPM Discussion Paper 74*, Section 3.4, available at http://www.ecdpm.org/Web_ECDPM/Web/Content/Navigation.nsf/index2?readform&http://www.ecdpm.org/Web_ECDPM/Web/Content/Content.nsf/0/0aff1ee6dde15146c12579ce004774b2?OpenDocument (accessed 14 August 2013).


¹⁷ 'investors' or 'investment community' refers to that part of the financial services sector which is concerned with the deployment of capital for infrastructure projects as an investor and not only a lender.


¹⁸ SAIIA 'PERISA Case Study 1 Private Sector The Non-Tariff Barrier Monitoring Mechanism' (2013), available at <http://www.saiia.org.za/news/new-publication-series-the-political-economy-of-regional-integration-in-africa> (accessed 14 August 2013).

1.4 Selected methodology

In supporting and / or casting doubt on some of the arguments postulated in this research paper, reliance will be placed on the primary texts of the SADC, i.e. the treaty and protocols published under the treaty, and reports of the Secretary General of the SADC. Secondary sources such as the reports produced by the World Bank Group, journal articles and newspaper sources will be relied on. Put differently, this research paper will rely, primarily on document analysis in reaching its conclusions.

It is intended that empirical data on trade movements and the level of investment in infrastructure and related aspects will be utilised to support the arguments presented in this research paper.

Finally, as the area of intra-regional trade is a topical one and is constantly evolving, use of internet sources is inevitable. The websites of reputable think tanks in the field of regional integration will be consulted and where a  referred to.

In the circumstances, the research will be  desktop based.

1.5 Chapter outline

Chapter 2 of this research paper considers the need for investment infrastructure development in Southern Africa. In this regard, chapter 2 will consider the trade related statistics relating to (i) infrastructure backlog, (ii) cost of doing business in Southern Africa under the ‘existing’ infrastructure and (ii) the cost of investing in new infrastructure. Concomitant with this statistical analysis, this research paper will make out the case for why the SADC has to consider public – private partnerships as the most viable model for responding to its infrastructure development challenge.

Chapters 3 and 4 consider the challenges and opportunities posed by the lack of infrastructure on regional integration in Southern Africa. In this regard, these chapters analyse the ‘legislative’ or legal framework for regional integration in Southern Africa and how these are implemented and monitored (if at all). Further, these chapters consider the challenges posed by the traditional lender role which the investment community has preferred thus far and

analyse the scope for mutually beneficial public – private partnerships. Chapter 4, in its discussion of the Regional Indicative Strategic Development Plan will argue that implicit in the various challenges outlined herein are opportunities for the investment community to deepen its participation in regional integration initiatives at both a policy level and an investment level. Ultimately, chapter 4 will advance the argument that the investment community can provide a useful feedback mechanism for policy-makers on the efficacy of regional integration initiatives insofar as they relate to the positioning and deployment of capital in large infrastructure projects.

Chapter 5 will outline the conclusions and recommendations drawn from this research paper and the preceding chapters. The focus of this chapter will be on policy recommendations on how the existing regional integration initiatives can be improved in order to realise the stated benefits of regional integration. Further, this chapter will succinctly state role public – private partnerships have to play in regional integration initiatives to ensure the success of regional integration in Southern Africa.



CHAPTER 2

THE NEED FOR INVESTMENT IN INFRASTRUCTURE DEVELOPMENT IN SOUTHERN AFRICA

2.1 Introduction

Mudzonga states that regional integration initiatives are attractive because they bring about economic growth and development, poverty alleviation, an enhanced standard and quality of life, and support for socially disadvantaged people.¹⁹ However, the gains identified by Mudzonga are not *a priori* and are dependent on the architecture of the regional integration initiative. Despite a well-intentioned SADC Treaty, Trade Protocol and Regional Integration Strategy (which are all discussed in greater detail at chapters 3 and 4); the volume and value of intra-regional trade in Southern Africa is still relatively low and consumer welfare is consequently poor.

2.2 Southern Africa trade statistics



According to the United Nations Conference on Trade and Development's (UNCTAD) *Economic Development in Africa Report 2013*²⁰ (the UNCTAD Report), various empirical studies have demonstrated that trade in goods in Africa has been rising faster than that witnessed in the developed and comparable developing economies.²¹ Even so, the UNCTAD Report concludes that the African continent still accounts for a very low share of world trade. Put differently, African trade volumes and/or trade values still lag behind other regions as a percentage of global world trade. In this regard, the UNCTAD Report notes that even though the level of trade in goods (comprising of exports and imports) between Africa and the rest of the world rose from US\$251 billion in 1996 to US\$1,151 billion in 2011 (indicating a more than quadruple increase in trade value), this is still negligible when compared with total

¹⁹ Evengelista M 'Implementation challenges for the SADC FTA: tariff and non-tariff barriers' (2008) *Proceedings of the Fifth Southern African Forum on Trade (SAFT)* (2008).

²⁰ UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 8 – 11.

²¹ Eurostat 'Africa – EU: Economic indicators, trade and investment' available at http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Africa-EU_-_economic_indicators,_trade_and_investment (accessed 14 August 2013).

world trade values.²² In 2011, exports and imports for Africa totalled \$582 billion and \$569 billion respectively.²³ From a nominal growth rate perspective, African trade kept pace with the surge in world trade that occurred over the last decade. African exports to the world grew at an average annual rate of 17.5% during the period from 2001 to 2006, outperforming growth both among developing economies (which recorded an annual growth rate of 11.5%) and developed economies (which recorded an annual growth rate of 9.3%).²⁴

The trend continued in the period from 2007 to 2011, with African exports growing (annually) on average faster than those in the developing and developed worlds (12.2% as against 9.9% and 7.4%, respectively).²⁵ The picture, insofar as it relates to imports into Africa followed the same trend, that is, imports into Africa grew nominally faster than those into the developing and developed worlds.²⁶ Notably, African export performance remained strong over the period from 2007 to 2011 when only volume growth rates are considered. In this regard, the UNCTAD Report notes that African exports rose in real terms at an annual rate of 5.2% compared to 4.8% for the world, 2.4% for developed economies and 2.9% for the developing Americas, albeit lower than developing Asia (which recorded 8.8%) and developing economies in general (which recorded 7.8%).²⁷ Significantly, Africa still scored the highest real growth rate of all mentioned categories of countries from an import perspective.



Though seemingly punching below its weight in relation to world trade, the picture is slightly more positive when intra-African trade is taken as a percentage of African trade with the rest of the world. The United Nations Commission for Africa (UNECA) supports the UNCTAD Report's findings that total intra-African trade reached US\$130.1 billion in 2011,

²² UNCTADSTAT 'Exports and imports of goods and services, annual, 1980-2012' available at <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=25116> (accessed 14 August 2013).

²³ Vanguard 'Intra-African trade hits \$130.1 billion in 2011' available at <http://www.vanguardngr.com/2013/07/intra-africa-trade-hits-130-1bn-in-2011-unctad-report/> (accessed 14 August 2013).

²⁴ UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 25.

²⁵ UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 25.

²⁶ UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 11 – 12.

²⁷ UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 10.

representing 11.3% of African trade with the world.²⁸ Thus, intra-African trade has shown a more than 200% increase (in nominal terms), rising from US\$45.9 billion in 1995 to US\$130.1 billion in 2011. It is interesting to note that the intra-African trade experienced positive growth in all years except for 1998-2001 and 2009, with these negative growth years coinciding with world economic recessions. This dip in intra-African trade points to a potentially vital but oft misunderstood relationship between the appetite for intra-African trade and world economic conditions. It appears (at least *prima facie*) that intra-African trade is sensitive to world economic conditions. We return to this point later insofar as it may have an impact on the financial services industry having an appetite for investing in hard infrastructure in Africa. For the sake of completeness, it is worth noting that average intra-African trade has consistently remained at below 15% compared with trade with the rest of the world.²⁹

Finally, the UNCTAD Report notes that intra-African exports grew at an average annual rate of 2.6% in the period from 2001 to 2006 and 3.2 per cent in the period from 2007 to 2011 from a volume perspective.³⁰ However, real growth rates were 9.4% and 4.2%, respectively. Expressed in nominal terms, the value of intra-African trade was \$32 billion in 2000 and \$130 billion in 2011. Most recently, the UNCTAD Report notes that the increase in the value of intra-African trade over the last decade was driven by price increases and not by volume or real value. In this regard, it is worth noting that while the value of intra-African trade increased by a factor of 4.1 from 2000 to 2011, in volume terms, it increased by only a factor of 1.7.



The above statistics cannot be viewed in an economic vacuum. It is vitally important that the structure of the African economy be taken into account when interpreting the above trade statistics.³¹ Put differently, what Africa produces and exports matters for intra-African trade.

²⁸ United Nations Economic Commission for Africa ‘Developments in International and Intra-African Trade’ 8th Session of the Committee on Trade, Regional Cooperation and Integration, 6 – 8 February (2013) 11 – 13.

²⁹ United Nations Economic Commission for Africa ‘Developments in International and Intra-African Trade’ 8th Session of the Committee on Trade, Regional Cooperation and Integration, 6 – 8 February (2013) 24.

³⁰ UNCTAD ‘Economic Development in Africa Report 2013’ *Intra-African trade: Unlocking private sector dynamism* 11.

³¹ United Nations Economic Commission for Africa ‘Developments in International and Intra-African Trade’ 8th Session of the Committee on Trade, Regional Cooperation and Integration, 6 – 8 February (2013) 50 – 55.

The UNCTAD Report holds that the relative narrowness of African production and export structures and Africa's dependence on primary commodities are inhibiting factors to the boosting of intraregional trade in Africa.³² As the above trade statistics refer mostly to trade in goods, the conclusion in relation to Africa's production and export structures necessary leads the manner in which such trade takes place. Put differently, it is necessary to consider the different ways in which the movement of goods is achieved within Africa (which, it is argued below, is achieved largely using road transport).³³

2.3 Cost of doing business in Southern Africa

Keane notes that econometric data seems to suggest that in the Southern African Development Community (SADC) non-tariff barriers reduce intra-SADC trade, while increasing exports of non-SADC countries into the community.³⁴ This is in the context of a World Trade Organisation-led global movement towards the elimination of tariff barriers.³⁵ However given the nature of non-tariff barriers, their effect on intra-SADC trade is hard to quantify. Nevertheless, it is widely believed that these barriers have a negative effect on intra-African / intra-SADC trade and need to be addressed.



For purposes of this research paper, transaction costs (transport and insurance costs) as a non-tariff barrier bear particular relevance.³⁶ Some authors argue that transaction costs are very high in Africa and are an impediment to the growth of intra-African trade.³⁷ This is particularly significant in light of the data revealed by business surveys which demonstrate that road transport is the preferred mode for the movement of goods in the context of intra-

³² UNCTAD 'Economic Development in Africa Report 2013' *Intra-African trade: Unlocking private sector dynamism* 54 – 55.

³³ W Naude and N Matthee 'The significance of transport costs in Africa', 2007 available at <http://archive.unu.edu/publications/briefs/policy-briefs/2007/pb05-07.pdf> (accessed 14 August 2013) (at page 2 thereof).

³⁴ J Keane 'Impediments to Intra-Regional Trade in Sub-Saharan Africa, 2010' available at <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7482.pdf> (accessed 14 August 2013) (at page vi thereof).

³⁵ See 'Understanding the WTO: Principles of the trading system' available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (accessed 14 August 2013).

³⁶ W Naude and N Matthee 'The significance of transport costs in Africa', 2007 available at <http://archive.unu.edu/publications/briefs/policy-briefs/2007/pb05-07.pdf> (accessed 14 August 2013) (at page 1 thereof).

³⁷ W Naude and N Matthee 'The significance of transport costs in Africa', 2007 available at <http://archive.unu.edu/publications/briefs/policy-briefs/2007/pb05-07.pdf> (accessed 14 August 2013) (at page 2 thereof).

African trade. The quality of the road infrastructure, particularly the major roads linking regional markets, is therefore of particular importance to intra-African trade. The UNCTAD Report notes that Africa currently has fewer kilometres of roads than it did 30 years ago and the region has the highest costs for transporting goods in the world.³⁸ This is in the context of competing socio-economic requirements for limited government resources at the national level post-colonialisation. Some authors note that on average, transaction costs are higher for intra-African trade than for trade with the rest of the world. For example, average transport costs in Africa represent 7.7% of total export value, which is twice the world average of 3.7%. Ofa writes that (i) approximately only 30% of Africa's roads are paved, (ii) importing a car from Addis Ababa to Abidjan costs an average US\$5 000 (compared with an average cost of US\$1 500 to import the same vehicle from Japan to Abidjan) and (iii) over a distance of about 500 kilometres between Douala and Bertoua, in Cameroon, up to 47 roadblocks can be found.³⁹ Boosting intra-African trade will therefore require extensive changes in trade policy and the establishment of new infrastructure specifically designed to foster it.

Notably, while the above picture is true for most of sub-Saharan Africa generally, it is (generally) not true of the SADC region. The World Bank's *Infrastructure Update on the SADC's infrastructure*, notes that the SADC has a well-developed road network that is in relatively good condition with almost all its regional trade corridors being paved.⁴⁰ Significantly, the World Bank posits that surface transport (comprising of rail and road transport) in Southern Africa is the cheapest in Africa, but still more expensive than other developing countries.⁴¹ Compared with West and Central Africa, the trucking industry in Southern Africa is competitive – showing lower profit margins. The World Bank also found that while the velocity of vehicles in Southern Africa is faster than all other regions of Africa, it remains rather slow compared with developed economies. However, the World Bank found that the slow speed is only marginally a factor of road infrastructure (which it argues is generally of reasonable quality), rather it is largely influenced by administrative barriers such as border and customs clearance



³⁸ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (vi).

³⁹ United Nations Economic Commission for Africa 'Developments in International and Intra-African Trade' 8th Session of the Committee on Trade, Regional Cooperation and Integration (2013).

⁴⁰ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (vi).

⁴¹ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (vi).

processes that keep trucks stationary for extended periods of time.⁴² In this regard, the World Bank reports harrowing statistics that it takes between 400 and 800 hours to move imports from ports to landlocked countries in SADC. Inefficiencies at ports due to long dwell times and lengthy customs processes account for a significant portion of the total time required to import goods. The cost of transporting imports costs between \$120 and \$270 per tonne, which the World Bank notes to be expensive in absolute terms but nonetheless the cheapest in Africa. Simply put therefore, the high logistics costs in SADC are mainly a function of delays at ports and freight charges that cumulate over long distances.

Doing Business, in its latest publication of *Doing Business in SADC* publication states that excessive document requirements, burdensome customs procedures, inefficient port operations and inadequate infrastructure all lead to extra costs and delays for exporters and importers, thereby stifling trade potential.⁴³ This is not restricted to the SADC region only. Further, *Doing Business* quotes that its research shows that exporters in developing countries gain more from a 10% drop in their trading costs than from a similar reduction in the tariffs applied to their products in global markets. If this research is true, then it is even more pertinent that transaction costs in Africa encourage intra-Africa trade.



It is no-wonder then, that the SADC has identified transport and communication infrastructure as fundamental areas requiring regional coordination.

2.4 Cost of investing in new hard infrastructure

The point is made above that SADC Member States are confronted with competing needs of their citizens at the national level – particularly within a post-colonial rebuilding context.⁴⁵ As regional integration hinges on regional cooperation and coordination, it is imperative that

⁴² See W Naude and N Matthee ‘The significance of transport costs in Africa’, 2007 available at <http://archive.unu.edu/publications/briefs/policy-briefs/2007/pb05-07.pdf> (accessed 14 August 2013) for support for this proposition though these authors identify a further three factors (at page 2 thereof).

⁴³ *Doing Business* ‘Regional Profile: Southern African Development Community (SADC)’ 2012, World Bank and International Finance Corporation.

⁴⁴ See P Love and R Lattimore ‘International Trade: Free, Fair and Open?’ available at <http://www.oecd-ilibrary.org/docserver/download/0109121ec005.pdf?expires=1376472529&id=id&accname=guest&checksum=3AEE2B22D1102DF0450CFEDB78A2C4B0> (Accessed 14 August 2013) for support for this proposition albeit expressed in welfare gains terms (at page 67 thereof).

⁴⁵ Section 2.3, paragraph 2.

analyses of the costs and benefits of regional integration are conducted at the regional and at the national level. It is argued that a failure to properly consider the unique needs of each Member State may mean the regional integration project loses support from citizens and will disincentivise policymakers from pursuing it.

In this regard, the World Bank reports that completing and preserving the SADC's regional information communications technology (ICT)⁴⁶, power, and transport infrastructure would require sustained spending of \$2.1 billion annually over the course of a decade.⁴⁷ While this might seem to be a large figure, it represents only about 7% of the overall infrastructure spending requirements (comprising both regional and national levels) for the SADC region.⁴⁸

Significantly, around \$1.6 billion of the \$2.1 billion a year is required for investment in new regional infrastructure assets, while the balance of \$0.4 billion is needed to maintain the regional network in perpetuity once established (with most of it associated with road maintenance). The World Bank, further, reports that the regional transport sector shows an annual spending requirement of \$0.3 billion, which is lower than the \$1.4 billion per year over the next decade required for investment in regional power assets. A conservative estimate is that regional infrastructure requirements (across all infrastructure sectors) represent about 1% of regional gross domestic product (GDP).⁴⁹ The burden of committing such a substantial portion of their national budgets may prove insurmountable for smaller economies within SADC. This is particularly true for the Democratic Republic of Congo, which would need to spend \$961 million a year over the next decade to deliver the infrastructure assets (mainly power) needed for the region. Mozambique's spending needs (concentrated in the power sector), while significantly lower than the Democratic Republic of Congo's needs at \$265 million a year, are significant for a country still awakening from a devastating civil war. Expressed relative to GDP, the Democratic Republic of Congo's (DRC) regional spending requirement translate to almost 14% of its GDP. The national economy could never plausibly deliver this level of financial commitment without external assistance or risking internal instability as it cuts social welfare spending.

⁴⁶ Which is critical from a customs perspective in order to reduce lead times.

⁴⁷ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (viii).

⁴⁸ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (viii).

⁴⁹ R Ranganathan and V Foster, 2011 'The SADC's Infrastructure: A Regional Perspective', World Bank (viii).

Besides the high investment required of the DRC, a large group of countries will need to spend between 1% and 5% of their GDP for regional infrastructure to reach the desirable level of regional integration and ease of doing business in SADC. However, this has to be viewed in the context where a 2% commitment of GDP for a country like Zambia could potentially pose an impossible challenge. In terms of current infrastructure spending, the Democratic Republic of Congo would need to spend over 190 percent of its current commitment on regional infrastructure- clearly an impossible proposition.

2.5 Ways in which to fund investment in new hard infrastructure

Bekele notes that the private sector (broadly) has an immense role to play in regional integration, particularly as private companies become too big for national markets and seek to expand through organic growth or acquisitions⁵⁰. In the same address, Bekele bemoans the lack of (i) a stable and peaceful political environment to attract and enable investment into the region, (ii) critical development infrastructure, (iii) national institutions to support regional integration and (iv) developed financial markets. It is clear from Bekele's address that the private sector (particularly the investment sector) can address at least one of these issues: infrastructure. However, to do so, it requires a partner.



This paper argues that there are strong indications, from a public sector perspective, that governments in Southern Africa, faced with competing domestic challenges arising from their troubled histories and constrained by national politics, can ill afford to dedicate significant portions of their budgets to dealing effectively with the regional infrastructure backlog.⁵¹ Further it is argued that even South Africa, which is the dominant regional economy, is constrained by domestic politics and lacklustre economic performance in this regard. Notably, South Africa has announced the roll-out of a R827 billion infrastructure programme over the next three years (beginning 2013) which includes building new road networks, reviving the ailing national rail network, building additional capacity at its ports and

⁵⁰ Bekele S 'Contribution of the Private Sector to Regional Integration and Success Stories' available at <http://cbsintl.files.wordpress.com/2007/12/paper-for-commu-2000-on-private-sector-and-regional-integration-sophia-bekele.pdf> (accessed 23 March 2013).

⁵¹ Section 2.4, paragraph 3.

increasing its electricity supply.⁵² South Africa intends to draw the funds for this programme from the fiscus and from state-owned enterprises.⁵³ South Africa's National Development Plan⁵⁴ (NDP) sets out that South Africa needs to spend 10% of its annual budget on infrastructure development. If spending at such a rate were to be reached and maintained over the period of the NDP's term, the country would have spent a total R11.8 trillion on infrastructure. However, KPMG's Planned Infrastructure Expenditure Report shows that South Africa is only spending closer to 8% of its GDP on infrastructure at the moment.⁵⁵ The KPMG Planned Infrastructure Expenditure Report and the NDP indicate that the gap in spending will total R297 billion from 2013 to 2016, even taking into account the R827 billion committed spending.⁵⁶ This means that South Africa will have to increase its infrastructure spend by 38% in order to catch up to the NDP target – failure to increase the spending means that the spending gap will be closer to R6 trillion by 2030. This level of ability to commit national saving or draw from the fiscus is unique to South Africa within the SADC region as explained above.

Due to sovereign constraints discussed above, the African Union and the SADC have set up an infrastructure coordinating body at the heads of State under the Chairmanship of President Jacob Zuma of South Africa. The University of the Western Cape priority infrastructure projects and (ii) engage with the investment community to look at ways in which countries can partner with



⁵² This excludes the possibility of increasing South Africa's investment in nuclear technologies which is mooted to be the largest public tender ever issued in South African history.

⁵³ R430-billion of the R827-billion to be spent over the next three years would come from the fiscus and R400-billion would be drawn from Eskom, Transnet and other state-owned enterprises. The R430-billion from the fiscus has been allocated to build schools, hospitals, clinics, dams, lay out water and sanitation projects, expand electricity networks and supply electricity to over a million new homes, build more courtrooms and prisons and construct better bus, commuter rail and road links. Funding R400-billion from state-owned enterprises would be drawn from their respective balance sheets and from additional borrowing over the next three years, backed by guarantees from the National Treasury. This would fund the ongoing building of power stations and the rolling out of new electricity transmission lines, as well as new rail, ports, pipelines, water-transfer schemes and various airport upgrades.

Read more:

<http://www.southafrica.info/business/economy/infrastructure/budget13b.htm#ixzz2bSGD8nYh>

(accessed 19 December 2013).

⁵⁴ This is a government blue-print policy document which sets out where South Africa must aim to be in 2030.

⁵⁵ KPMG, 2013 'Planned infrastructure expenditure and the NDP: Mind the gap', available at <http://www.kpmg.com/ZA/en/IssuesAndInsights/ArticlesPublications/General-Industries-Publications/Documents/Mind%20the%20gap.pdf> (accessed 19 December 2013) (at page 1 thereof).

⁵⁶ KPMG, 2013 'Planned infrastructure expenditure and the NDP: Mind the gap', available at <http://www.kpmg.com/ZA/en/IssuesAndInsights/ArticlesPublications/General-Industries-Publications/Documents/Mind%20the%20gap.pdf> (accessed 19 December 2013) (at page 4 thereof).

the investment community to fund such projects.⁵⁷ It is submitted that this approach takes into account that governments do not have the necessary financial resources to fund these projects, and the parties who do have such financial resources are unwilling to commit large amounts of their own funds without securing some form of financial or guarantee backing from sovereigns as a risk mitigation strategy. Further, these forms of partnerships bring with them skills and technology transfers which are rich in the private sector (generally) but which are not available in the public sector (please see discussion on Madagascar above). Therefore, the private sector partners are not only funding partners but also operational partners over a period of time while training public officials on the effective management of the asset.

Notably, the African Union Commission (AUC) (the executive arm of the African Union), NEPAD Planning and Coordinating Agency (NEPAD Agency), African Development Bank (AfDB), United Nations Economic Commission for Africa (UNECA) and Regional Economic Communities (RECs) (of which the SADC is but one) have developed the Programme for Infrastructure Development in Africa (PIDA).⁵⁸ PIDA was endorsed as the African infrastructure blueprint document by the Heads of State and Government at their 18th Summit in January 2012 in Addis Ababa, Ethiopia. PIDA is the kind of coordinated infrastructure programme which has been lacking and which is welcome. It brings together all of the key players from a macro-policy perspective and ensures easier coordination for cross-border infrastructure projects as all stakeholders are now talking to each other.⁵⁹



2.6 Programme for Infrastructure Development in Africa

However, it is submitted that the Achilles heel of PIDA is that it identifies the private sector as playing ‘a critical role in the implementation process, particularly in the financing, construction, operation and maintenance of infrastructure’.⁶⁰ PIDA, however, envisages that ‘many of the PIDA projects will be public-private partnership’. Therefore, according to PIDA’s architects, the private sector will be invited into the PIDA process only once the

⁵⁷ C Bathembu ‘Zuma tables Africa infrastructure report’ *SA News.co.za* 29 January 2014, available at <http://www.sanews.gov.za/africa/zuma-tables-africa-infrastructure-report> (accessed 1 March 2014).

⁵⁸ PIDA “About PIDA” available at <http://www.au-pida.org/about-pida> (accessed 19 December 2013).

⁵⁹ PIDA “Implementing PIDA” available at <http://www.au-pida.org/implementing-pida> (accessed 19 December 2013).

⁶⁰ PIDA “PIDA Stakeholders” available at <http://www.au-pida.org/pida-stakeholders> (accessed 19 December 2013).

projects have been identified and the process only requires implementation. Respectfully, it is submitted that this is not a true public-private partnership but rather envisages a cost-sharing exercise. PIDA should not have stopped only at bringing all of the macro-policy makers under one policy framework, it should have gone further to introduce the private sector in the project identification and design phase. Such an approach would have realised that the primary drivers of regional economic integration are not States but rather the private sector in its quest to reach more consumers, increase efficiencies and ultimately, increase its returns to investors. This proliferation of goods and services, made possible by seamless cooperation between macro-policy makers and the private sector, would ultimately lead to the welfare gains that are sought after through the pursuit of regional integration. For example, it may well be that PIDA is ill-advised to pursue a broadband penetration strategy for a largely rural continent as mobile is cheaper and faster. Private sector participants, who have been involved in the provision of internet connectivity on the continent, may be important stakeholders to engage with prior to the project implementation stage. PIDA is discussed in greater detail at Chapter 4 of this paper.

2.7 Conclusion



This chapter, supported by statistical analyses at sections 2.3 and 2.4, has demonstrated the enormous infrastructure investment gaps in Southern Africa. Significantly, this chapter has succinctly presented the levels of investment required to address this investment gap in a manner which supports this research paper's main thesis, namely that deeper integration of the private sector in the form of public-private partnerships is the only viable alternative to infrastructure development and regional integration in Southern Africa.

CHAPTER 3

INFRASTRUCTURE: CHALLENGES AND OPPORTUNITIES

3.1 Introduction

This chapter analyses the ‘legislative’ or legal framework for regional integration in Southern Africa and how these are implemented and monitored (if at all). Further, this chapter considers the challenges posed by the traditional lender role which the private sector has preferred thus far and analyses the scope for mutually beneficial public – private partnerships. This chapter will argue, however, that implicit in the various challenges outlined herein are opportunities for the private sector to deepen its participation in regional integration initiatives at both a policy level and an investment level, and relies on a case study of the Maputo Development Corridor to demonstrate the efficacy of such deep public-private cooperation. This chapter will also advance the argument that the private sector can provide a useful feedback mechanism for policy on the efficacy of regional integration initiatives insofar as they relate to the financing and deployment of capital in large infrastructure projects.



3.2 The SADC Treaty

The Treaty of the Southern African Development Community, 1992 (the Treaty), establishes the Southern African Development Community (SADC) as an international organisation with juristic personality.⁶¹ Only the most relevant articles of the Treaty shall be discussed below in relation to this paper’s central thesis.

Article 5 (1) (a) of the Treaty provides that the SADC’s objectives, *inter alia*, include the achievement of development and economic growth, poverty alleviation, the enhancement of the standard and quality of life of the people of Southern Africa and to support the disadvantaged through regional integration. Further, Article 5 (1) (b) provides that the SADC shall aim to create common political values, systems and institutions.

⁶¹ Treaty of the Southern African Development Community, 1992.

The drafting of Article 5 (1) (a) lends itself to some interpretational challenges as it is ambiguous. First, the achievement of development and economic growth, poverty alleviation, the enhancement of the standard and quality of life of the people of Southern Africa and support the disadvantaged through regional integration can be read to be distinct objectives separate from each other.⁶² This interpretation would lead to one concluding that the achievement of development and economic growth is separate to poverty alleviation which in turn is separate to enhancement of the standard and quality of life of the people of Southern Africa. Most significantly however, it is argued that this interpretation would mean that regional integration (in this context) would be used only to support the disadvantaged. Though this interpretation leads to an absurdity in relation to the regional integration aspect, it is perfectly sound insofar as it relates to (i) the achievement of development and economic growth, (ii) poverty alleviation, and (iii) the enhancement of the standard and quality of life of the people of Southern Africa.

However, this paper posits that to read Article 5 (1) (a) in this fragmented manner would defeat the true intention of the High Court, and in any event, would be akin to putting the cart before the horse. As argued by Zonga at section 2.1 above, it is through successfully pursuing and implementing regional integration initiatives that the achievement of development and economic growth, poverty alleviation, the enhancement of the standard and quality of life of the people of Southern Africa and support of the disadvantaged will become possible from a SADC perspective.⁶⁴ Therefore, a second and more purposive interpretation is preferred.⁶⁵ This interpretation posits that the achievement of development and economic growth, poverty alleviation, the enhancement of the standard and quality of life of the people of Southern Africa and supporting the disadvantaged are to be read together as outcomes of regional integration. In this manner, it is submitted that Article 5 (1) (a) is interpreted to refer to the SADC's realisation of and commitment to, regional integration as a way of achieving development and economic growth, poverty alleviation, the enhancement of the standard and quality of life of the people of Southern Africa and supporting the disadvantaged. Rather than having four distinct objectives as per the former interpretation, Article 5 (1) (a) in fact creates only one objective – regional integration. Put differently,



⁶² Devenish GE *Interpretation of Statutes* (1996) 26.

⁶³ As defined in the Treaty.




⁶⁴ Evangelista M 'Implementation challenges for the SADC FTA: tariff and non-tariff barriers' (2008) *Proceedings of the Fifth Southern African Forum on Trade (SAFT)* (2008).

⁶⁵ Devenish GE *Interpretation of Statutes* (1996) 26.

regional integration is therefore not an end in itself, but is rather a conduit to the realisation of the objectives set out in Article 5 (1) (a).

This latter interpretation is supported by the rest of Article 5 (1) which, at Article 5 (1) (b), enjoins the SADC to create common political values, systems and institutions. Read alone, Article 5 (1) (b) begs the question “to what end?” However, read together with Article 5 (1) (a), no such question arises. In fact, this research paper argues that Article 5 (1) (b) is a necessary condition precedent for the realisation of Article 5 (1) (a) and its objectives.

Article 5 (2) of the Treaty sets out various actions which the SADC must undertake in order to achieve the objectives set out in Article 5 (1). In this regard, Articles 5 (2) (a) – (d) and (i) are particularly relevant for purposes of this research paper.

Article 5 (2) (a) enjoins the SADC to harmonise political and socio-economic policies and plans of its Member States. Further, Article 5 (2) (b) enjoins the SADC to promote regional integration at citizen and corporate entity  in Member States' territories. Articles 5 (2) (c) and (d) enjoin the SADC to create  and mechanisms for the mobilisation of resources for SADC programmes and to  policies that eliminate barriers to the free movement of capital, labour, goods and services, and people, respectively. Finally, Article 5 (2) (i) provides that SADC must secure international solidarity and support and work to mobilise the inflow of public and private resources into the region. We return to this point later.

To achieve its objectives, the SADC has created various institutions.⁶⁶ Of particular relevance for present purposes are the Summit and the Secretariat which are created in terms of Article 9 of the Treaty. The Treaty provides that the Summit consists of the Heads of State of the Member States and is the supreme policy-making institution of SADC.⁶⁷ Further, the Summit is charged with overall control of the functions of SADC and is empowered to adopt appropriate legal instruments for the implementation of the Treaty. Notably, the Summit is empowered to delegate its authority to any institution of SADC on terms deemed appropriate by the Summit.⁶⁸ Article 14 provides that the Secretariat is the principal executive institution

⁶⁶ Chapter 5, Articles 9 – 16.

⁶⁷ Article 10 (1).

⁶⁸ Article 10 (3).

of SADC with responsibility, *inter alia*, to implement decisions of the Summit, representation and promotion of SADC and coordination and harmonisation of policies and strategies of Member States.⁶⁹ The Treaty does not define what it means by 'representation'. The meaning of the word 'representation' is critical in understanding the full extent or limitation of the Secretariat's powers and authority. This may mean 'representation' as in the ability to enter into or alter legal relationships⁷⁰ on behalf of another or could have an ordinary dictionary meaning.⁷¹ This paper argues that as the Treaty maintains the sovereignty of its Member States, the word 'representation' cannot unassailably be interpreted to refer to the ability to enter into or alter legal relationships on behalf of another as this would likely infringe on the Member States' sovereignty and the Summit's competence. However, as it is shown later in this research paper, it is desirable that the word representation be interpreted in the legal sense, that is, to mean the power to enter into and alter legal relationships on behalf of another, if the Secretariat is to meaningfully implement and monitor regional integration initiatives.

Article 21 of the Treaty provides that Member States shall cooperate in all areas necessary to foster regional development and integration. Member States shall coordinate, rationalise and harmonise their macro-economic and sectoral policies and strategies in the identified areas of cooperation. The Treaty identifies seven areas of cooperation, including infrastructure and services, industry, trade, investment and finance, and human resources development, science and technology.⁷² In this regard, the Treaty empowers the Summit to create such agreements between Member States as are necessary to determine the scope of cooperation in the identified areas. These agreements are called Protocols.⁷³

Notably, the Treaty encourages the Member States to include non-governmental organisations in the process of regional integration. As the phrase 'non-governmental organisation' is not defined in the Treaty, this research paper takes it to mean any entity

⁶⁹ Article 14 (1).

⁷⁰ LAWSA, Vol 1 *The act of representation* and Truter, Crous, Wiggill & Vos v Udwin 1981 4 SA 68 (T).

⁷¹ "representation" Collins English Dictionary - Complete & Unabridged 10th Edition. HarperCollins Publishers. Available at Dictionary.com <http://dictionary.reference.com/browse/representation> (accessed 17 August 2013).

⁷² Article 21 (3).

⁷³ Article 22.

(corporate or incorporate) which is not governmental.⁷⁴ This broad definition includes the private sector.

Finally, Article 25 of the Treaty provides that SADC shall be responsible for the mobilisation of resources for its own use (administration) and those required for the implementation of its programmes. In furtherance of its objectives, the SADC is empowered to create such institutions as may be necessary for the effective and efficient application of resources for regional development.⁷⁵

3.3 The SADC Protocol on Trade, 1996 (as amended)

The SADC entered into a Protocol on Trade in the Southern African Development Community Region in 1996 (the Trade Protocol) and subsequently amended it in 2000, 2007 and 2008 in relation to Article 12 (dealing with Rules of Origin).

Given that this is not a treatise on the Trade Protocol, selected sections of the Trade Protocol which may have led to an increase in regional trade will be discussed in this research paper.



The objectives of the Trade Protocol are, *inter alia*, to liberalise intra-regional trade in goods and services, ensure efficient production with SADC by basing trade on the principle of comparative advantage,⁷⁶ enhance economic development, diversify and industrialise SADC economies and establish a Free Trade Area.⁷⁷ The above objectives are informed by the SADC's understanding that trade in goods and services and the enhancement of cross-border investment are key areas of cooperation in SADC and further, that increased intra-SADC

⁷⁴ This definition is at odds with the generally understood definition of non-governmental organization referring to a voluntary group of individuals or organisations, usually not affiliated with any government which is formed to provide (public) services or to advocate a public policy. "non governmental organization" Encyclopaedia Britannica, Available at <http://global.britannica.com/EBchecked/topic/759090/nongovernmental-organization-NGO> (accessed 17 August 2013)

⁷⁵ Article 24 (2).

⁷⁶ Comparative advantage refers to the ability of a country to produce a particular good or service at a lower marginal and opportunity cost over another. Even if one country is more efficient in the production of all goods (absolute advantage in all goods) than the other, both countries will still gain by trading with each other, as long as they have different relative efficiencies.

⁷⁷ Article 2. As discussed at Chapter 1 (paragraph 1.2), the SADC FTA was inaugurated in August 2008 by 11 of the 14 SADC Member States.

trade and investment is essential to the economic integration of SADC member states.⁷⁸ Kalaba and Tsedu, in their 2008 paper, noted that at the commencement of the TP (i.e. in 2000) SADC's total exports were marginally in excess of US\$50 billion. By the end of 2006, the value of SADC exports was over US\$113 billion.⁷⁹ Intuitively this points to some success regarding the implementation of the Trade Protocol.

As the pre-eminent legal text on the rights and obligations of SADC member states in relation to cross-border trade in goods and services, the Trade Protocol has to deal with such issues as tariffs, non-tariff barriers, duties, quantitative restrictions and, most importantly for this research paper, the modalities of achieving such cross border trade (including rules of origin, customs procedures and institutional arrangements pertaining to monitoring and evaluation of the Trade Protocol, trade policies of member states and relations between SADC member states *inter se* on the one hand and relations between SADC / SADC member states and third parties on the other).

One of the objectives of the Trade Protocol is the creation of a Free Trade Area.⁸⁰ As such, it is no surprise then that Articles 3 to 6 of the Trade Protocol deal with the obligation of SADC member states to eliminate import / export duties as well as remove and / or refrain from introducing any new forms of non-tariff barriers to intra-SADC trade.



While the provisions of the Trade Protocol discussed above are noteworthy but expected of a trade agreement, the key aspects that will determine the Trade Protocol's success are *inter alia* (i) is there adequate regional infrastructure to move the goods efficiently and (iv) are the correct institutional mechanisms in place to support the implementation of the Trade Protocol? It is submitted that the absence of clarity and coherence in any one of these questions posed herein has the potential to derail the successful implementation of the Trade Protocol.

Significantly for purposes of this research paper and in response to the question whether there is adequate regional infrastructure to move goods efficiently, Articles 5, 6 and 8 to Annex 2 concerning the Customs Cooperation with the SADC provides for the simplification and

⁷⁸ Preamble to the Trade Protocol.

⁷⁹ Kalaba M and Tsedu M 'Implementation of the SADC Trade Protocol and the Intra-SADC Trade Performance' (2008) *Southern African Development Research Network*, 4.

⁸⁰ Article 2(5) – see footnote 77 for more information in this regard.

harmonisation of customs procedures, computerisation of customs operations and cooperation in training among customs agencies in the SADC region. However, though the legal framework to do so is in place and though there are SADC customs procedures, it is regrettable that Article 6 of Annex 2 relating to computerisation of customs procedures has not been universally implemented within the SADC region. Even the region's largest economy, South Africa, has only recently moved from a paper-based customs administration system to a computer-based system (contrast this with the discussion on Madagascar at Chapter 2 above).⁸¹ This means that the region does not have adequate regional infrastructure to ensure the free movement of goods in SADC and thereby support implementation of the Trade Protocol. This is not surprising as SADC Member States are at varying levels of development. However, as discussed at Chapter 2, this situation is improving as more countries embrace technology and as systems integration among customs agencies gains traction.⁸² Paying for the infrastructure remains a continuing challenge.

Finally, it is important that the question whether the correct institutional mechanisms are in place to support the implementation of the Trade Protocol is answered. A striking feature of the Trade Protocol is that it is fundamentally an agreement between sovereign states and does not envisage a SADC institution with the authority to administer customs on behalf of the member states. Each member state has certain obligations but these are then watered down with phrases such as 'Notwithstanding the provisions of..., Member States may...' or 'Nothing in this Protocol shall prevent a Member State from...'



This ambivalence on the part of SADC members contributes to the challenge of implementing the Trade Protocol and its ambitious objectives as it remains subject to the domestic challenges of member states. Further, even though Article 2 of Annex V concerning trade development envisages that the private sector shall be intimately involved in the formulation and implementation of trade policies, this involvement is at country level and so also falls prey to domestic politics. In any event, even if the private sector were to somehow ignore domestic politics of its country and craft policies that are devoid of domestic

⁸¹ IT Web 'SARS customs system to reduce red tape', 2013 available at http://www.itweb.co.za/index.php?option=com_content&view=article&id=66814 (accessed 30 December 2013).

⁸² Tech Central 'SA drags customs into 21st century', 2013 available at <http://www.techcentral.co.za/sa-drags-customs-into-21st-century/43448/> (accessed 30 December 2013).

challenges, that policy would then still be subject to scrutiny by the other member states at SADC level.

In the circumstances, it appears prudent that the Trade Protocol should be placed within the exclusive remit of the SADC Secretariat and the business community must engage directly with the Secretariat so that the document that is produced is a SADC document and will be defended by the Secretariat – arguably a neutral party with only the SADC’s interests to protect. Further, as the primary market participants, the business community will be best placed to constitute a vital feedback mechanism to the SADC Secretariat on the implementation of the Trade Protocol.⁸³ Such an institutional mechanism reduces the reporting levels from a minimum fourteen levels (being the number of SADC members) to a maximum of four (being the SADC Secretariat, the committee of senior officials, the committee of Ministers and the Summit).

This mechanism would also be in line with the SADC’s own Private Sector Involvement Strategy in Customs Matters (PSISCM) which envisages a three pronged private-sector engagement system comprising (i) strengthening of Customs to Business dialogue mechanisms at the Member States level, (ii) enhancing the capacity of Customs Administration to Business dialogue, through improving information flows and (iii) strengthening private sector involvement on customs issues at the regional level.⁸⁴ The PSISCM envisages that the private sector can be involved at Member State level but can also be involved directly at regional level without necessarily first going through Member States. This allows for flexibility and for certain issues to be expedited. Though not embodied in a Protocol, the mechanism provided by the PSISCM offers the most feasible and integrated mechanism to address the lack of deep private sector involvement in policy design and implementation in SADC at the moment.



⁸³ SAIIA ‘PERISA Case Study 1 Private Sector The Non-Tariff Barrier Monitoring Mechanism’ (2013), available at <http://www.saiia.org.za/news/new-publication-series-the-political-economy-of-regional-integration-in-africa> (accessed 14 August 2013).

⁸⁴ SADC ‘Private Sector Involvement Strategy in Customs Matters’, 2013 available at http://www.sadc.int/files/2213/7415/0061/Private_Sector_Involvement_Strategy.pdf (accessed 30 December 2013).

3.4 The SADC Protocol on Finance and Investment, 2006

The primary objective of the SADC Protocol on Finance and Investment is stated as the

‘harmonisation of the financial and investment policies of the State Parties⁸⁵ in order to make them consistent with objectives of SADC and to ensure that any changes to financial and investment policies in one State Party do not necessitate undesirable adjustments in other State Parties’.⁸⁶

Fundamentally, the objective of the protocol (and the SADC) is to achieve sustainable economic development, growth and eradication of poverty.

Though this research paper focuses on private-public partnerships in the design, funding, construction and maintenance of hard infrastructure in SADC, the supporting financial infrastructure is vital to the realisation of seamless trade within the region. In this regard, this research paper would be deficient if it did not address the payment and clearing of funds for hard infrastructure and trade generally, to which exchange controls may either impede or enable investment in infrastructure or enable seamless cross-border trade, how investment is to be attracted into the region and how the public sector can partner with the private sector in large cross-border projects, and finally how returns on investment will be treated from a tax perspective and repatriated out of the region (if necessary). Though the issues identified immediately below are uniquely ‘public’ in that they fall primarily within the competence of governments, this research paper will demonstrate that the private sector remains a vital stakeholder and feedback mechanism for efforts by states to enable investment and trade in the region.

As alluded to above, Article 2(2) of the protocol envisages a number of areas of cooperation which will lead to the attainment of the goals of economic development and poverty eradication, including macroeconomic stability and convergence, exchange control policies, the legal and operational framework of Central Banks (as defined in the protocol), payment, clearing and settlement systems, bank supervision, development finance institutions (DFIs),

⁸⁵ The Protocol on Finance and Investment uses the term ‘State Parties’ rather than its equivalent ‘Member States’.

⁸⁶ Article 2(1).

SADC stock exchanges and the creation of a SADC Project Preparation and Development Fund. Clearly, it can be seen that at first glance, these issues intuitively fall within a ‘public’ paradigm. However, as regional integration is an area which requires cooperation between states and the private sector and there is often an overlap of competencies, this research paper will demonstrate that the issues identified are not in the exclusive domain of states.

The SADC Protocol on Finance and Investment has two striking features, namely (i) the principal text is short and all substantive provisions are contained in the Annexes, and (ii) it is concerned with the legal and operational independence of Central Banks in the region. Though this latter feature of the protocol would appear to be superfluous in the South African context where the South African Reserve Bank has always enjoyed operational independence, this is not the case in a number of countries where the central bank functions much like a government department.⁸⁷ Further, the question that arises is to what extent the private sector should be concerned with the legal framework and / or independence of the Central Bank. These points are traversed in the discussions below.



As with the discussion on the Trade I discussion on the SADC Protocol on Finance and Investment will focus only on the provisions and / or annexes which are most relevant for purposes of this research paper. This research paper will not discuss in any great detail any aspect of the protocol but will rather point out deficiencies and recommend certain policy actions to bolster the provisions of the protocol and make them more business friendly. However, as the Protocol on Finance and Investment is highly technical and its annexes dense; it will be dealt with differently. Each relevant article and annex will be discussed separately below. The following articles (and their respective annexes) will be discussed:

- Article 5 relating to taxation and related matters;
- Article 11 relating to activities of DFIs; and

⁸⁷ The South African Reserve Bank (the Bank) was established in terms of section 9 of the Currency and Banking Act, No. 31 of 1920 (Banking Act). The Banking Act was subsequently repealed and replaced by the South African Reserve Bank Act, No. 90 of 1989 (SARB Act). The Bank's establishment is provided, and its operational independence is assured, in terms of sections 223 to 225 of the Constitution of the Republic of South Africa, 1996 (the Constitution). Section 224 (2) of the Constitution provides that "the Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters." The independence and autonomy of the Bank are, therefore, entrenched in the Constitution.

- Article 16 relating to the development of a SADC Project Preparation and Development Fund.

Finally, this section will respond to the questions posed above relating to the true nature of the Protocol on Finance and Investment, i.e. whether it is uniquely ‘public’ or is a hybrid document and if so, to what extent is there scope for private sector integration.

Article 5: Cooperation in Taxation and Related Matters

This is arguably one of the most important provisions of the protocol. The tax treatment of investments and investment returns not only affects investors’ appetite for investment in certain jurisdictions, but it also affects cross-border trade. In all transactions, who and how one is liable for taxation is a critical question to ask as it may mean the difference between a profitable venture and one that, due to taxation in various guises and jurisdictions, is not financially viable. Further, taxation is a deeply cherished and guarded sovereign competence as it goes to the heart of a state’s ability to raise revenue. However, within the context of regional integration and the creation of investment markets, State Parties have to make compromises on this politically-charged issue in the interests of regional convergence. Acknowledging this reality, Article 5 provides that State Parties shall cooperate in tax matters and shall coordinate their tax regimes.



As a first step to coordinating tax regimes between State Parties, Article 2 of Annex 3 provides that the State Parties shall create and maintain a publicly available SADC Tax Database.⁸⁸ In the ordinary course, States compete for investment and in so doing, may offer various incentives to the private sector to encourage it to invest in its territory. The SADC, recognising that its members are at different levels of development and therefore that others are able to offer insurmountable tax incentives over other, has in Article 4 proscribed the introduction of tax legislation which prejudices another State Party’s economic policies or activities, or the regional mobility of goods, services, capital and /or labour. This is of course a sensible provision if the benefits of integration initiatives are to flow to all members and not

⁸⁸ Available at <http://www.sadc.int/information-services/tax-database/> (accessed 2 January 2014).

only to the economically large members. In any event, State Parties are obliged to adhere to common guidelines for tax incentives in the region.⁸⁹

In relation to the vital issue of the treatment of repatriated income or returns on investment, the Protocol on Finance and Investment provides that State Parties shall (i) develop a common policy for the negotiation of Tax Agreements between them and with countries outside the region, and (ii) collectively establish a comprehensive network of agreements for the avoidance of double taxation.⁹⁰ The risk of double taxation is ever present in cross-border trade and / or investment and would dampen investor appetite in SADC for regional projects. As such, distinction would need to be made between regional investments or investments with a regional effect / dimension and investments of a domestic nature. The former investment is a prime candidate for double tax avoidance.

Further, and in recognition of WTO obligations, the State Parties have recorded their undertaking to gradually substitute taxes on internationally traded goods and services with an indirect tax on consumption.⁹¹ The use of the word ‘internationally’ in this context is confusing as it may mean goods or services traded between SADC Member States and third parties or goods or services traded among SADC Member States. As this Annex deals with relations between SADC Member States, the latter interpretation appears most likely.



Annex 3 is a valuable tool to attracting investment and trade in the region as it responds to the tax treatment of returns and goods. However, it does not respond to the issue of repatriation of returns.

Article 11: Facilitation of Activities of DFIs

This Article provides concrete partnership opportunities between governments and the private sector in the identification, design, funding and implementation of cross-border projects.⁹² In this regard, the State Parties agreed to establish a Development Finance Institutions (DFI) Network with the aim of cooperation between the DFIs and ultimately increase cross-border

⁸⁹ Annex 3, Article 4 (1).

⁹⁰ Annex 3, Article 5.



⁹¹ Article 6.

⁹² Annex 9, Article 2 (1).

flows of finance for projects.⁹³ Annex 9 states the DFI Network's objectives as to *inter alia* collaborate on Projects, pool resources for the mobilisation of finance for Projects and joint investing in new structures where considered necessary.⁹⁴ As this is merely a network, it has no stand-alone institutional structures but has provisions for meetings at executive level and how it reaches its decisions. This flexibility is welcome.

Article 11 and Annex 9 however miss an important opportunity. Neither of them designate the DFI Network or individual DFI's as the institutions that will interface with the private sector in relation to project design and finance. Ultimately, this appears to be left with the State Parties, thereby diminishing the role of DFIs. This observation is particularly relevant as DFI's are operationally independent from their shareholder government and are tasked with investing only in commercially viable projects. As state owned entities, it is difficult to see why the state would not delegate its project finance competence to these specialised vehicles that they have set up, opting instead to create a dual-system of government-backed and / or DFI-backed projects. DFIs are market players while the state is not.



Private investors, arguably, would prefer  with DFIs in projects as DFIs are business oriented and are not grant agencies – the  of profit driven. This is particularly the case in jurisdictions where the rule of law is respected as the investment climate will not change depending on the government of the day. This is a serious lack of foresight on the part of State Parties and this research paper recommends that DFIs be made the official named parties in public-private partnership projects as it lends a degree of predictability in business.

This paper argues that the SADC's present practice of appointing one State Party to underwrite a project and to sign contracts on its behalf means that there is no uniformity (of whatever kind) in SADC projects and regrettably, no institutional capacity or memory within SADC institutions on how to negotiate contracts of this nature and monitor implementation thereof. This expertise would be available within DFI's and furthermore, DFI's would be better placed to go as a consortium into the financial markets to raise project finance based on the strength of their balance sheets as opposed to States that are affected by social, political, fiscal and macro-economic factors when trying to raise finance on the open market.

⁹³ Annex 9, Article 3.

⁹⁴ Annex 9, Article 3.

Article 16: Development of a SADC Project Preparation and Development Fund

This Article enjoins State Parties to establish a Project Preparation and Development Fund to

‘finance the preparation and development of projects by way of providing technical assistance towards project identification, project selection and feasibility studies and to participate in the financing of selected projects’.⁹⁵

Whilst this is a welcome initiative particularly in risky projects where investors would not willingly invest alone without some form of state backing or guarantee, the discussion on Article 11 relating to DFIs remains relevant to an analysis of this provision. State Parties have already formed agencies which are tasked with project finance and development initiatives, it is therefore peculiar for the State Parties to then reserve the Project Preparation and Development Fund to them rather than delegating that competence to DFIs which have the expertise in this area. Further, as discussed above, DFIs are able to raise capital from the capital and financial markets in ways which State Parties are not able. Furthermore, DFIs can raise capital on the back of their balance sheets which State Parties could not be penalised for any perceived (or real) political risk as they do not depend on the State. Of course, DFI’s could have state guarantees where possible so that financially weak DFI’s financial obligations are backed by the relevant government. This method of raising project finance is more market friendly and insulates State Parties from paying higher interest rates merely because they are perceived to be unstable. The real benefit of project finance based on this model would be even greater where it was raised via the DFI Network as financial and other risks would be shared amongst SADC DFIs – some of which have enviable balance sheets (for example, South Africa Industrial Development Corporation and the Development Bank of Southern Africa).



3.5 The SADC Protocol on Transport and Communications, 1996

The thesis of this research paper is that deeper public-private partnerships are necessary for regional integration initiatives to succeed in Southern Africa. In this regard, focus on hard infrastructure (for example roads, rail and airports) and soft infrastructure (for example customs administration information systems) have been identified as prime examples where

⁹⁵ Article 16.

such cooperation between SADC Member States and the private sector would be advantageous. Against this backdrop, the Protocol on Transport, Communications and Meteorology in the SADC Region (the Protocol on Transport) provides the framework for the development of both the hard- and soft-infrastructure mentioned above.

Article 2.1 of the Protocol on Transport states its objectives as the establishment of transport, communication and meteorology systems which provide efficient, cost-effective and fully integrated infrastructure and operations. These objectives are augmented by Article 2.1 (dealing with the scope of the Protocol on Transport's application) which provides that its scope:

'comprises the entirety of the transport, communications and meteorology sectors in each Member State and the region, including but not limited to – (a) all policy, legal, regulatory, institutional, operational, logistical, technical, commercial, administrative, financial, human resource and other issues; (b) international, continental, regional and national activities; and (c) the public and private sectors in each Member State, as well as the activities of the public and private sectors in the region, to the degree that their activities overlap with the subject-matter of the Protocol.'




For the first time, a protocol which from the outset includes the private sector and adopts an integrated approach to infrastructure planning is in place. The Protocol on Transport has been drafted in such a manner that any stakeholder who is affected by it has been provided for and acknowledges that the public sector cannot deliver on the infrastructure challenge on its own. This acknowledgement is implicit in the recognition of overlaps with the private sectors' activities at Article 2.1(c).

Further, Article 2.4 enjoins the Member States to engage all stakeholders in implementing the Protocol by promoting certain strategic goals, including (i) integration of regional transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures;⁹⁶ (ii) broad-based investment to develop, preserve and improve viable strategic transport, communications and meteorology infrastructure within an investor-friendly environment generating adequate

⁹⁶ Article 2.1(a).

returns;⁹⁷ (iii) optimal utilisation of public and private financial, human and other resources and the effective allocation of existing scarce resources;⁹⁸ (iv) co-operative policy development facilitated by strategic partnerships between government and a responsible and competent regional private sector;⁹⁹ (v) adequate own funding and appropriate supplementary funding, amongst others, through recovery of full costs for maintenance of infrastructure and service provision and progressive recovery of full future costs for infrastructure and service provision on an equitable basis;¹⁰⁰ (vi) customer driven service provision characterised by adequate access to basic transport, communications and meteorology services and progressive improvement of service quality;¹⁰¹ and (vii) focused investment in joint human resource development programmes, information management schemes, research and development projects and technology transfer initiatives.¹⁰²

Article 3.1 (dealing with the Protocol's objectives in relation to integrated transport) states that Member States shall promote economically viable integrated transport service provision in the region to support the development of major regional development corridors and facilitate travel between the territories.  'corridor' is defined in the Protocol to mean 'a major regional transportation route through which a significant proportion of Member States' or non-Member States' regional imports and exports are carried by various transport modes, the development of which is deemed to be a regional priority'.¹⁰³ In this regard, Article 3.2 provides for the development of harmonised integrated transport policy among the Member States which addresses the (i) establishment of infrastructure, logistical systems and institutional frameworks; (ii) establishment of appropriate legal and financial frameworks; and (iii) development of effective communication networks which support intra- and intermodal¹⁰⁴ synergy and the optimal utilisation of modes. Most importantly, and perhaps fundamentally for the realisation of true regional integration, Article 3.2(2) obliges the Member States to develop the integrated transport policy on the basis of

⁹⁷ Article 2.1(c).

⁹⁸ Article 2.1(e).

⁹⁹ Article 2.1(i).

¹⁰⁰ Article 2.1(f).

¹⁰¹ Article 2.1(k).

¹⁰² Article 2.1(n).

¹⁰³ Article 1.1.

¹⁰⁴ Intermodal transport is defined to mean "the transport of goods by several modes from one point or port of origin via one or more interface points to a final point or port, where one of the carriers organises the whole transport without assuming liability for the entire transport from origin to final destination".

certain principles, including (i) the right to freedom of transit for persons and goods, (ii) the right to land-locked Member States to unimpeded access to and from the sea and *vice versa*, and (iii) equality of treatment of the nationals and passenger service providers of Member States with regard to the provision, access and use of infrastructure and immigration and clearance procedures. These principles are vital as they establish a legal framework for the identification, design, financing, implementation and monitoring of corridors. Article 3.3 mandates Member States to *inter alia* cooperate in providing, operating and maintaining transport infrastructure and, notably, provides that Member States shall promote the management of existing and future infrastructure by both the public and private sectors.

The Protocol on Transport creates a vibrant institutional framework for its implementation by providing that Member States shall involve all transport modes in promoting intra- and intermodal cooperation between stakeholders and shall support the development of regional development corridors.¹⁰⁵ Further, the protocol enjoins Member States to promote the establishment of cross-border multimodal Corridor Planning Committees comprising of public and private sector stakeholders from Member States whose territory or territories are traversed by such corridors.¹⁰⁶





An example of the successful implementation of the objectives and institutional framework of the Protocol on Transport is the Maputo Development Corridor which links the landlocked provinces of Gauteng, Limpopo and Mpumalanga, South Africa with the port of Maputo, Mozambique. The Maputo Development Corridor comprises road, rail and customs infrastructure and impacts also on the right to free movement of persons (border control). The principal objectives of the Maputo Development Corridor have been identified as the rehabilitation of existing core infrastructure; the attraction of investment to the corridor and the region; making the corridor sustainable through relevant policies and strategies; and to maximise the impact of investing in and developing the corridor.¹⁰⁷ The realisation of the above objectives, much like the theory underpinning the pursuit of regional integration initiatives, is anticipated to produce benefits that include enhancing cross-border trade; opening up neighbouring markets to one another, granting access to global markets;

¹⁰⁵ Article 3.3.

¹⁰⁶ Articles 3.5(1) and 3.5(3).

¹⁰⁷ Maputo Corridor Logistics Initiative 'MCLI Corporate Profile', available at <http://www.mcli.co.za/mcli-web/mcli/aboutmcli.htm> (accessed 6 January 2014).

increasing cross-border tourism; encouraging private investment; and using private-sector investment to displace the use of public sector resources.¹⁰⁸

Bowlan and Otto writing in the South African Institute of Foreign Affairs' series of policy briefings, note that "The Maputo Development Corridor is the largest and most successful development corridor initiative thus far in the Southern African Development Community (SADC) region, if not within Africa as a whole."¹⁰⁹ The authors identify three features as being distinctive about the Maputo Development Corridor initiative, namely (i) its efficient management and successes in terms of public-private partnerships, (ii) the crucial role it has played in the broader, regional initiative of linking the Atlantic and Indian Oceans via the Trans-Kalahari and Capital Corridors and (iii) the level of political will at executive level to see the successful implementation of the corridor. A defining feature of the institutional mechanisms supporting the development of the Maputo Development Corridor is the Maputo Corridor Logistics Initiative (MCLI). The MCLI is a non-profit organisation comprising infrastructure investors, service providers and stakeholders from Mozambique, South Africa and Swaziland who are focussed on the  and further development of the Maputo Development Corridor as the region's p  tics transportation route.¹¹⁰ The MCLI describes its vision as:




'To become the leading corridor stakeholders' coordinator, contributing to the aims and objectives of the Maputo Development Corridor. This will be achieved by working towards a logistics Corridor based on excellence - a cost-effective, continuous, reliable logistics route, creating an enabling environment for further investment and development, with positive returns for all stakeholders. The MCLI's strategic objectives are described as 'To coordinate the views of service providers and users of the Corridor to promote development and change, making the Maputo Development Corridor the first choice for the region's importers and exporters alike.

¹⁰⁸ TRAC, 'Maputo Corridor (objectives and benefits)', available at http://www.tracn4.co.za/index.php?option=com_content&view=article&id=53&Itemid=91 (accessed 6 January 2014).

¹⁰⁹ SAIIA 'Implementing Development Corridors: Lessons from the Maputo Corridor', 2012 available at <http://www.saiia.org.za/itpgooglesearch?gsquery=maputo+corridor> (accessed 6 January 2014).

¹¹⁰ MCLI, 'MCLI Corporate Profile', available at <http://www.mcli.co.za/mcli-web/mcli/aboutmcli.htm> (accessed 6 January 2014).

To inform the market about the Corridor and to market the strategic benefits and opportunities offered by the Corridor'.¹¹¹

Bowlan and Otto described the MCLI as having been a crucial public-private partnership in the coordination of activities in the region and lobbying to address outstanding issues that act as constraints to regional trade, development, investment and the free movement of people. The authors' further comment that the MCLI has assisted in facilitating cooperation, allowed for networking, and enabled the resolution of logistical and operational issues by offering a platform through which all stakeholders can engage.¹¹² In their assessment, which is supported by arguments made in this research paper, the authors surmise that initiatives like the MCLI should be encouraged as they provide a platform for different actors and users (public and private) to coordinate their activities and to voice and address operational concerns. Put differently, such initiatives can help to increase the efficacy of operating other corridors as all stakeholders are included in a single forum and are well versed in the reasons for a corridor being pursued. Further, the authors note that public-private partnerships should be promoted. Public-private partnership  ly in a region with countries at different stages of development with some facing  nestic challenges, can provide financing for fiscally constrained countries, and c  ategic role in garnering the support and increased involvement of the private sector.¹¹³ The involvement of private sector partners increases confidence on the part of other market players that a project will materialise and will do so efficiently and cost-effectively. Therefore, public-private partnerships as witnessed in the case of the Maputo Development Corridor can be of crucial importance for the success of other corridors.

Though the Protocol on Transport includes infrastructure, and infrastructure was defined as part of 'soft' infrastructure at chapter 1,¹¹⁴ as the communications sector is highly regulated, concentrated and due to the sheer magnitude of capital costs involved in participating in this

¹¹¹ MCLI, 'MCLI Corporate Profile', available at <http://www.mcli.co.za/mcli-web/mcli/aboutmcli.htm> (accessed 6 January 2014).

¹¹² SAIIA 'Implementing Development Corridors: Lessons from the Maputo Corridor', 2012 available at <http://www.saiia.org.za/itpgooglesearch?gsquery=maputo+corridor> (accessed 6 January 2014).

¹¹³ SAIIA 'Implementing Development Corridors: Lessons from the Maputo Corridor', 2012 available at <http://www.saiia.org.za/itpgooglesearch?gsquery=maputo+corridor> (accessed 6 January 2014)..

¹¹⁴ Section 1.1.

sector is dominated by state actors, this sector will not be discussed in this paper.¹¹⁵ Dynamic synergies between the public and private sector and the public sector are limited in this area and in any event, brilliant communications infrastructure in the region is not a pre-condition to regional integration or cross-border trade and investment. It merely facilitates ease of doing business.

3.6 Conclusion

All of the above protocols¹¹⁶ and their associated documents create the framework for the private sector to participate in SADC programmes and identify opportunities in which they can partner with SADC Member States to deliver the required infrastructure for regional integration. However in order for the private sector, through the vehicle of public-private partnerships, to meaningfully participate in the policy design and project implementation landscape in the region; something more needs to be in place. In this regard, realistic and measurable plans for the implementation of these protocols and associated documents are critical. This research paper discusses such in the following chapters.



¹¹⁵ James Hodge and Keith Weeks ‘The Economics of Telecommunications and Its Regulation’ available at <http://thornton.co.za/resources/telelaw5.pdf> (accessed 6 January 2014).

¹¹⁶ And indeed, other protocols like the Protocol on Trade in Services (2012); Protocol on the Development of Tourism (1998); Protocol on Science Technology and Innovation (2008); Protocol on Trade - Sanitary and Phyto-sanitary (SPS); Protocol Against Corruption (2001); Protocol on Legal Affairs (2000); and Protocol on Energy (1996).

CHAPTER 4.1

REGIONAL PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION PLANS

4.1.1 Introduction

Beyond creating the enabling legal framework for the private sector to participate in regional integration initiatives in the region (which can be interpreted either broadly or restrictively), it is imperative that a strategy be devised on how the Member States foresee the protocols being implemented. In this regard, the SADC region has developed its blueprint strategy, the Regional Indicative Strategic Development Plan which provides for the identification of projects and foresees how the private sector can go about exploiting such opportunities in a manner that frees resources from the public purse but also ensures vibrancy of the regional private sector. In addition, the AU has developed the Programme for Infrastructure Development in Africa. Both these strategies are analysed below.

This chapter will firstly put forward the Regional Indicative Strategic Development Plan followed by a discussion of the Programme for Infrastructure Development in Africa. Thereafter, this research paper will argue (at chapter 4.2.1) that a robust private sector and a visionary legal architecture will be required for implementation of the SADC legal framework for regional integration.




4.1.2 Trade, Economic Liberalisation and Development

The SADCs impetus in this area is driven by its belated realisation that implementing trade and economic liberalisation initiatives earnestly and successfully leads to economic growth¹¹⁷ and improvement in the quality of life. This is because, as argued at Chapter 2 of this research paper, investors are on a search for economies of scale and efficiency gains in

¹¹⁷ This research paper acknowledges that, at least in the beginning, not all countries benefit from a liberalisation process. Indeed, some countries may experience severe hardship as their industries face increased competition from foreign firms and result in loss of jobs and tax revenue. However, as these countries adjust and find their comparative advantage, they too will benefit from a trade liberalisation programme. However, in the interim, it is vital that a revenue loss mechanism be put in place to offset the initial loss of revenue by the State otherwise social programmes in that State may be adversely affected and this may lead to social unrest and a mistrust of the trade liberalisation process.

production. This phenomenon means that markets now need to be competitive at domestic and international levels and the bigger the market, the higher the levels of investment it attracts. Key to the SADC's success in this area will be the full and timely implementation of the Trade Protocol and the Protocol on Finance and Investment. However, important milestones have already been missed in relation to the Trade Protocol, including setting up a Customs Union by 2010 and a Common Market by 2015.

4.1.3 The Private Sector

The RISDP recognises that a developed private sector, complemented by a dynamic public-private partnership environment, encourages better orientation of the economy towards meeting human needs.¹¹⁸ In this regard, the RISDP commits the Member States to view the private sector as a strategic vehicle through which to achieve its objectives of deeper integration and poverty alleviation. In pursuit of the above goals, the RISDP makes the argument that the private sector, as the primary driver of growth, be integrated into the SADC's policy and strategy formulation programme implementation. As a concrete measurement of its commitment to this programme implementation, the RISDP provided a period of three years (2001 – 2004) for the development of a  on Public-Private Sector Partnership. Regrettably, this has not materialised to date. However, the RISDPs target that a Private Sector Unit be institutionalised within the Secretariat to provide support to the Secretariat and regional private sector units by 2004 has been met. The work of this unit is ably supported by the SADC PPP Network¹¹⁹ which is a platform for the exchange of information and experiences, and promotes capacity development of PPP capabilities in the public and private sectors as well as promoting harmonisation of PPP policy and regulatory frameworks in the region. The mission of the SADC PPP Network describes its mission as the strengthening of the public sector's capacity to engage in PPPs.¹²⁰

4.1.4 Infrastructure Support for Regional Integration

As per the Protocol on Transport, Communications and Meteorology, the RISDP recognises

¹¹⁸ Page 63, paragraph 4.8.1 of the RISDP.

¹¹⁹ Available at <http://www.sadcpppnetwork.org/>.

¹²⁰ Tralac 'Private and public sectors announce first ever Joint Dialogue Session', 2013 available at <http://www.tralac.org/2013/09/26/private-and-public-sectors-announce-first-ever-joint-dialogue-session/> (accessed 9 January 2014).

that the availability of sufficient, integrated efficient and cost-effective infrastructure is vital to promoting and sustaining regional economic development, trade and investment. Without the correct hard-and soft infrastructure, trade and cross-border investment and capital flows are hindered. In relation to this broad area, the RISDP aims to *inter alia* promote sustainable sources of funding for the provision and maintenance of infrastructure, promote the use of public-private partnerships in the provision of infrastructure and services, liberalise hard infrastructure and harmonise policies that affect the cross-border movement of people and goods.¹²¹ In relation to the transport sector, the RISDP had set the year 2008 as the target year for the full liberalisation of the transport market and the harmonisation of rules, standards and policies. The extent to which this has been successfully implemented in 2013 is questionable as there is no SADC common vehicle registration or driver licensing regime for instance.

In its discussion on how the RISDP could be financed, the RISDP differentiates between funding for SADC's coordinating functions and financing for development activities. The former financing refers to funding the Secretariat and various other SADC Institutions and programmes. Put differently, this refers to the SADC bureaucracy. The RISDP identifies primarily public sources of funding from SADC institutions, comprising transfers from the fiscus of its members, official development assistance, debt relief, domestic savings (see discussion above on the use of pension funds) and DFIs / the DFI Network.



In relation to funding for financing of development activities, the RISDP identifies four broad mechanisms namely public-private partnerships, financial and capital markets, private equity and venture capital and the SADC Development Fund. Though the RISDP does no more than repeat the discussions already traversed above in relation to public-private partnerships, its discussion in this instance differs in two material respects. In the first instance, the RISDP identifies a seemingly closed list of various options available in partnering with the private sector. These include lease contracts¹²², concessions¹²³, build-operate-transfer or build-own-


¹²¹ Page 69, Paragraph 4.11.4.3.

¹²² A lease contract is defined as the situation when “a private company rents facilities from a municipality and assumes responsibility for operation and maintenance. The lessee finances working capital and replacement of capital components with limited economic life and fixed assets remain the responsibility of the public partner.”

¹²³ A concession is defined to mean the situation where “a private company handles operations and maintenance and finances investments in addition to working capital of a public partner. The public partner exercises a regulatory and oversight role and receives a concession fee for this arrangement.”

transfer (BOT)¹²⁴ and corporatisation¹²⁵. Significantly, the RISDP also puts percentage and time targets on public-private partnerships – by providing that there must be a 70:30 ratio of public-to-private financing of physical infrastructure by 2010 with this ratio increasing to 50:50 by 2015.

However, these two points betray the dynamism of the market and the private sector. Limiting the options for how a public-private partnership could be structured to only four options, though providing predictability and certainty for business, also restricts innovation on how infrastructure and services can be delivered (financed). The possibility of hybrid structures has not been explored. Though the RISDP cannot be expected to anticipate and provide for every conceivable scenario, as an enabling framework, it must provide built-in flexibility to permit both the public and private sectors to be innovative in how they partner and how they raise finance in the open market or privately. Nevertheless, this research paper is mindful of the challenges that a highly regulated and political arena like the public sector pose and that standardisation and regulation are more-often a necessity than a luxury.¹²⁶

Secondly, though the quantification of  welcome, there is no indication that the private sector was consulted on the ‘idea’ of public-private funding for infrastructure. In any event, as key strategies and policies of finance and investment have not been implemented, the achievement of this goal at a regional level is doubtful. Strong economies like South Africa, Tanzania and Botswana could arguably unilaterally achieve this goal.

In respect of financial and capital markets, the RISDP again acknowledges that a well-developed and robust financial system increases flows of foreign investment into the region. However, the RISDP does not create the linkages between this increase in foreign investment flows with a sound rule of law and respect for property rights (see the discussion on the SADC Tribunal above).


¹²⁴ A BOT is defined as “a form of concession with an emphasis on construction of new, stand-alone systems and comes in several variations.”

¹²⁵ Corporatisation is defined a when “a government entity forms a separate legal corporate entity to manage service provision. These corporate entities are often referred to as ‘utilities’ and are partnerships in the sense that government creates a separate contractual ‘partner’.

¹²⁶ South African National Treasury – PPP Unit ‘Standardised Public-Private Partnership Provisions’, available at

http://www.ppp.gov.za/Legal%20Aspects/Standardised%20PPP%20Provisions/National%20Treasury%20PPP%20Practice%20Note%20No%201%20of%202004;%20Standardised%20PPP%20Provisions;%20First%20Issue;%2011%20March%202004_1.pdf (accessed 9 January 2014).

Interestingly, the RISDP identifies both private equity¹²⁷ and venture capital¹²⁸ as possible sources of funding for infrastructure. However, venture capital appears to be an inappropriate form of financing for large infrastructure projects as it is geared for start-up enterprises and is limited in its financial scope (typically from R1 million to R10 million). Private equity, however, is appropriate for the region's infrastructure programme and the RISDP correctly notes that there has been a proliferation of transnational private equity funds which have a mandate to invest in different regions or countries.¹²⁹ This observation is supported by financial institutions that are active in this area.¹³⁰ The African Development Bank (AfDB), in its report on private equity investment trends on the continent, notes that investments in infrastructure by pension funds and insurance companies are improving and that having a specialised public sector institution like the AfDB as a partner reassures investors that there is a solid, experienced player in the continent's infrastructure space working alongside them to ensure that projects are completed effectively.¹³¹ These investor concerns relate to political risk, rule of law and property rights and Africa being an emerging market. Thus perceptions and how the legal institutions set up to regulate conduct operate are critical to attracting investment to the


 The success of the Maputo Development Corridor is in large part because it is in la of Southern Africa's most legally and politically stable countries and is in la honored on South Africa's dominant and private-sector led economy. Simply put, the private sector trusts the private sector and as the

¹²⁷ Wuite R *The South African Dictionary of Finance* (2009) 304 defines private equity as “The process of wealthy individuals or specialised funds seeking extra returns by buying undervalued assets which are often public companies, delisting them if they are listed and then holding on to them for a period before selling them at significant profits in the future. Private equity firms usually use substantial amounts of debt to capitalise the companies they buy. Private equity firms often take active management roles in the firms they purchase. Pension funds do not allocate investment resources to private equity companies or funds as they are risky in nature.”

¹²⁸ Wuite R *The South African Dictionary of Finance* (2009) 400 defines venture capital as “The provision of equity capital, usually seed capital, to non-listed firms. Venture capitalists help to develop new products, expand working capital, strengthen balance sheets and make new acquisitions. They seek high returns because they take on significant levels of risk as the probability of the businesses in which they invest going bankrupt is high. Up to 40% returns are often required by VCs. Sometimes called risk capital.”

¹²⁹ Page 80, paragraph 5.3.3 of the RISDP.

¹³⁰ BDLive ‘Stanlib launches African infrastructure equity fund’, 2013 available at <http://www.bdlive.co.za/africa/africanbusiness/2013/06/11/stanlib-launches-african-infrastructure-equity-fund> (accessed 9 January 2013).

¹³¹ African Development Bank ‘Private Equity Investment in Africa: In Support of Inclusive and Green Growth’, 2012 available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Private%20Equity%20Investment%20in%20Africa%20-%20In%20Support%20of%20Inclusive%20and%20Green%20Growth.pdf> (accessed 9 January 2014).

region has historically been socialist (or at least the State has been the main market player), its leaders have yet to fully appreciate the private sector and its potential.

The RISDP predates the Protocol on Finance and Investment and so does not analyse the role of the SADC Development Fund.¹³² However, as discussed in the section on the Protocol on Finance and Investment, the SADC Development Fund ought to be housed within a DFI or an institution like the AfDB so that sector expertise straddling both the public and private sectors can be utilised. As demonstrated by the AfDB, it is easier to raise finance from the capital and financial markets where a DFI is a lead partner – purely on a business trust basis.

This observation (on cooperation between the public and private sectors and the effect of this on financing, construction and maintenance of projects) has a profound impact on how the other strategies that are offshoots of the RISDP ought to be formulated. This refers to strategies like the Regional Infrastructure Development Master Plan for the Transport Sector and various other sectors which each have their own Infrastructure Development Master Plans. All of the principle issues relating to the private sector ought to be integrated into the policy design, and implementation to actual project identification, finance, construction, and maintenance remain as part of every other strategy that comes out of the RISDP process or SADC Protocols. The challenge for the Secretariat will be to ensure that there is symmetry and convergence between the regional strategies and policies *inter se* (and the RISDP is a good starting point) and between the region's policies and strategies and continental strategies and policies. The importance of the latter point will become clearer below.






4.1.5 The Regional Indicative Strategic Development Plan

The SADC Summit met Namibia in March 2001 and, amongst other issues, approved the restructuring of SADC institutions (the restructuring).¹³³ One of the noteworthy outcomes of the restructuring was the grouping of the previous 21 sectors recognised by SADC into

¹³² The Protocol on Finance and Investment only came into effect in 2006 while the RISDP was launched in 2001, some 5 years earlier.

¹³³ SADC 'Regional Indicative Strategic Development Plan (RISDP)', available at <http://www.sadc.int/about-sadc/overview/strategic-pl/regional-indicative-strategic-development-plan/> (accessed 9 January 2014).

clusters operating under four directorates at the Secretariat.¹³⁴ Further, the Summit approved the establishment of SADC national committees with the mandate of coordinating individual Member State's interests in relation to SADC.¹³⁵ However for purposes of this research paper, the Summit's single-most critical decision was to approve the preparation of a Regional Indicative Strategic Development Plan (RISDP) by the Secretariat to *inter alia* complement the restructuring and to provide a clear blueprint for SADC policies and programmes over the long term. As the restructuring was aimed at configuring SADC institutions and processes to be coherent and deliver an efficient and coordinated service to the region, it was also vital that the new institutions follow a coherent and integrated blueprint in executing their mandate.

Thus the RISDP served to align the SADC's strategic objectives and priorities with the policies and strategies to be pursued towards the attainment of those objectives over a fifteen year period. As discussed above,¹³⁶ there has often been discord between the SADC's stated objectives and the policies it drafts or alternatively, the manner in which those policies are implemented. The SADC has lacked an  approach to pursuing its agenda and the RISDP was designed to remedy that ch  is is because the Secretariat recognised that the SADC's policies, strategies  were not properly coordinated, particularly across sectors and this led to sub-optimal regional integration results. The RISDP, as the region's premier blueprint strategy from an economic perspective, identifies and strengthens synergies, programmes and policies of the various sectors recognised by SADC with a view to improving efficiency and delivery of SADC's programmes.¹³⁷ Further, the RISDP sets clear and measurable targets for implementation of the SADC's goals and

¹³⁴ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 13 thereof).

¹³⁵ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 13 thereof).

¹³⁶ See discussion on Article 16 of the Protocol on Finance and Investment.

¹³⁷ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 55 thereof).

builds in monitoring mechanisms into its framework.¹³⁸ Perhaps most importantly, the RISDP finally recognises the Secretariat as a central implementing and coordinating agency and in so doing, provides the Secretariat and other SADC institutions with clear guidelines on SADC's approved social and economic priorities and policies, and, therefore, enhances their effectiveness in discharging their facilitating and coordinating role. This is particularly important when considering that the Secretariat has to engage with a diverse group of stakeholders across various sectors and needs to convey a consistent message to all stakeholders.¹³⁹ This degree of certainty is vital for the private sector to be able to properly assess opportunities and risks in the region and to anticipate state action on matters of interest to it.

An interesting feature of the RISDP is that it does not start off merely stating a desired future outcome, rather, it spends a reasonable amount of time reviewing existing social and economic policies and strategies and how the SADC's development from the SADCC, the acceptance of South Africa into the SADC and the various other key events have shaped and impacted on these policies and strategies. I argued therefore that this contextual placement is critical in understanding the RISDP's implementation, possible unintended consequences and its amendment or repeal.



In a similar analysis as that carried out in this paper, the RISDP seeks to conduct a review of the challenges and/or successes of six key areas of regional cooperation in relation to the private sector, namely (i) trade, (ii) industry, (iii) finance, (iv) investment and (v) infrastructure and services, and (vi) communications. These six key areas of cooperation are grouped into four clusters and this research paper proposes to adopt the same clusters as the RISDP's. However, only two of these clusters are relevant and will be discussed. These are firstly trade and secondly transport and communication:

¹³⁸ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at Chapter 7, pages 91 - 93 thereof).

¹³⁹ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at Chapter 6 thereof).

4.1.5.1 Trade

The RISDP acknowledges that trade is a traditional catalyst to regional integration and is a key driver for growth and poverty reduction.¹⁴⁰ The RISDP makes the point that finance and investment usually follow only after a sustainable and stable trade regime has been established.¹⁴¹ The logical persuasion of this proposition is all too clear – people and firms trade in the ordinary course and as part of their human and economic survival. Trade is therefore a base need. Finance and investment can only follow established trade patterns to further strengthen them as risk will (presumably) be lower at that stage.

The RISDP makes the point, from an economic perspective, that the region is largely a producer of similar primary goods (i.e. no product differentiation on the basis of comparative advantage).¹⁴² This challenge is set to remain for some time as the region is endowed with significant quantities of metals and minerals and has some of the world's most arable land.¹⁴³ This phenomenon is evident in that the approximately 90% of the region's exports comprise of (raw) mineral and agricultural goods. The RISDP therefore proposes that the SADC's key policies, strategies and protocols should be aligned against this historical and economic backdrop.



The RISDP focuses on the Trade Protocol as the Protocol on Finance and Investment was not in existence at the time of its drafting. As to be expected of a blueprint document, the RISDP begins its analysis from a future point (2008) where the Trade Protocol envisages that there

¹⁴⁰ Page 23, paragraph 3.2.1.

¹⁴¹ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 65 thereof).

¹⁴² Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 24 thereof).

¹⁴³ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 24 thereof).

¹⁴⁴ Southern African Development Community, 2001 'Regional Indicative Strategic Development Plan', available at http://www.sadc.int/files/5713/5292/8372/Regional_Indicative_Strategic_Development_Plan.pdf (accessed 9 January 2014) (at page 24 thereof).

will be a Free Trade Area.¹⁴⁵ However, the RISDP also notes that the achievement of an FTA is not an end in itself; it is a starting point to achieving a Customs Union and ultimately a Common Market. It then asks the question how the region will get to a Free Trade Area. For the sake of brevity, it suffices to note that the RISDP raises the same points as raised in the discussions above relating to implementation of the Trade Protocol and the harmonisation of customs rules and procedures.¹⁴⁶ However, the RISDP raises additional key concerns of an economic and legal / political nature relating to trade in the region. From an economic perspective, the RISDP identifies supply side constraints and competitiveness of SADC industry as key concerns requiring urgent action.¹⁴⁷ From a legal / political perspective, the RISDP identifies the thorny issue of overlapping membership of SADC Member States to a number of other regional organisations which sometimes impose conflicting obligations on them.¹⁴⁸ Professor Bhagwati refers to this phenomenon as the “spaghetti bowl”.¹⁴⁹

4.1.5.2 **Transport and Communications**

4.1.5.2.1 **Transport**



As anticipated, the RISDP focuses on the UNIVERSITY of the
WESTERN CAPE and implementation of the Protocol on Transport, Communications and Meteorology. The objectives and implementation of the Protocol on Transport, Communications and Meteorology are discussed at Chapter 3 above and for the sake of brevity, are not repeated herein. For the sake of completeness, it is noted that this paper does not discuss any aspects relating to meteorology.

The implementation of the Protocol on Transport, Communications and Meteorology has been remarkably successful, particularly in relation to the transport sector.¹⁵⁰ This success does not appear to have been a fortunate coincidence but rather the result of coordinated action and a realisation from SADC that public resources could not alone resolve the

¹⁴⁵ The Trade Protocol (as amended) envisaged that there will be a SADC Free Trade Area by 2008. This has not materialised, at least not completely.

¹⁴⁶ See discussion at Chapter 3, section 3.3, paragraph 7.

¹⁴⁷ Page 25, paragraph 3.2.2.3 of the RISDP.

¹⁴⁸ Page 25, paragraph 3.2.2.3 of the RISDP.

¹⁴⁹ Bhagwati J ‘US Trade Policy: the infatuation with FTAs’ available at http://www.academiccommons.columbia.edu/download/.../econ_9495_726.pdf (accessed 9 January 2014).

¹⁵⁰ See discussion at Chapter 3 on the Protocol on Transport, Communications and Meteorology.

transport challenge. In this regard, the RISDP had identified raising sustainable funding for the provision, rehabilitation and maintenance of infrastructure, attracting the private sector through public-private partnerships and promoting regional development corridors as microcosms of regional integration as key building blocks for achieving the protocol's objectives. The identification and development of the Maputo Development Corridor as discussed in section 3.5 has all of the above ingredients and is an example of the successful implementation of the RISDP and the protocol. It is therefore ripe for replication in the region.

4.1.5.2.2 **Communications**

Though this research paper does not focus on communications for the reasons identified at section 3.5 above, it bears mention that in its discussion of so-called 'cross-cutting issues', the RISDP dedicates entire sections to analyses of the private sector and the ICT sector.

4.1.6 **Private Sector Engagement**



In its analysis of the private sector, the UNIVERSITY of the WESTERN CAPE makes the bold-statement that 'The SADC region is evolving from a largely state controlled economy to a private sector led economy.'¹⁵¹ However, the RISDP notes that there is no coherent framework for how the private sector ought to be engaged in the region and relations between the public and private sector are characterised by strong cooperation in some Member States to cautious acknowledgement in others. The RISDP appears to be supportive of this paper's prime thesis that oftentimes the private sector is simply handed policies for implementation but had not been invited to participate in the policymaking process. The RISDP makes a second, and perhaps bolder statement by stating that

'In those countries where the public sector sees it as mandatory to consult the private sector on policy, legislation and programmes that affect business, markets tend to be better regulated and developed and business environments are more attractive to both internal and external investors.'¹⁵²

¹⁵¹ Page 49, paragraph 3.6.4.1 of the RISDP.

¹⁵² Page 49, paragraph 3.6.4.1 of the RISDP.

This assertion by the RISDP supports this paper's thesis that the role of the private sector transcends the traditional passive financier role. The RISDP appears to support the proposition that deeper engagement between the private and public sectors will result in better policies being drafted and implemented as the private sector is a key market participant. It is respectfully submitted that the RISDP's observations at the national level are equally relevant to the regional level (as seen with the development of the Maputo Development Corridor).

Finally, the RISDP makes two fundamental observations in relation to relations between SADC / public sector and the private sector, namely that a SADC policy for strong public-private partnerships and dialogue needs to be developed and that the private sector needs to be integrated into the SADC framework. However, the RISDP stops short of taking this line of argument to its conclusion, namely that integration of the private sector into the SADC framework on a regional basis will require enhancement of the Secretariat's role to more than being a mere administrative arm. It is argued that the Secretariat may need to be elevated to an executive arm with all the concomitant powers and authority to act on behalf of the SADC. At present, only the Summit has



y.¹⁵³

Having done an analysis of the challenges facing the region in achieving its integration objectives, particularly in relation to trade, finance and investment and the free movement of people and capital; the RISDP identified a number of priority areas for targeted focus and intervention.¹⁵⁴ For purposes of this research paper, only three will be discussed, namely (i) the private sector, (ii) trade, economic liberalisation and development, and (iii) infrastructure support.

4.1.7 The Programme for Infrastructure Development in Africa

The SADC region is but one of the various regions which are said to be the building blocks of the African Economic Community (AEC).¹⁵⁵ In fact, Resolution CM/Res.464 QCXVI of the

¹⁵³ Articles 10 (1) and 10 (2) of the Treaty.

¹⁵⁴ Page 55, Chapter 4.

¹⁵⁵ The African Economic Community is established by Article 2 of the Treaty Establishing the African Economic Community (commonly known as the Abuja Treaty).

Organisation of African Unity's¹⁵⁶ Council of Ministers¹⁵⁷ divides the continent into five regions, namely North Africa, West Africa, Central Africa, East Africa and Southern Africa.

As such, the RISDP and other policies and/or strategies of the SADC region cannot be viewed in a vacuum but must be aligned with the African Union's overall continental strategies as part of the six phase step to the realisation of the AEC.¹⁵⁸ Put differently, the Secretariat has to ensure that there is symmetry and convergence between the region's various strategies and policies *inter se* (and the RISDP is a good starting point) and between the region's policies and strategies and continental strategies and policies.

In this regard, the African Union's Programme for Infrastructure Development (PIDA) is relevant. PIDA is a joint initiative of the African Union Commission (AUC), the New Partnership for Africa's Development Planning and Coordination Agency (NPCA), and the African Development Bank (AfDB). As discussed above, the involvement of a DFI like the AfDB in such programmes reassures investors that there is a solid, experienced player in the continent's infrastructure space working in tandem. This is vital for increasing investor confidence in the context of an emerging market and attracting investment flows into the region. For the sake of completeness, the University of the Western Cape at the regional economic communities, private sector and civil society are also noted as partners in PIDA. However, of particular concern is that PIDA identifies the private sector thus "As a key partner in infrastructure development, the private sector plays a critical role in the implementation process, particularly in the financing, construction, operation and maintenance of infrastructure. In partnership with governments, many of the PIDA projects will be public-private partnership."¹⁵⁹ This formulation of the private sector's role in infrastructure development in Africa as only a finance, construction and maintenance partnership limits the potential scope of robustness of the relationship as demonstrated by the successful implementation of the Maputo Development Corridor and the principles underlying the RISDP. This philosophical disjuncture between the SADC as an AEC building block and PIDA as a continental strategy



¹⁵⁶ The Organisation of African Union is now known as the African Union in terms of the Constitutive Act of the African Union adopted in 2000 at the Lome Summit (Togo), entered into force in 2001. The African Union was launched in Durban, South Africa in 2002.

¹⁵⁷ This has now been superseded by the Executive Council, created in terms of Article 5 of the Constitutive Act of the African Union.

¹⁵⁸ These phases are provided in Article 6 (2) of the Abuja Treaty.


¹⁵⁹ PIDA 'About PIDA: PIDA Stakeholders', available at <http://www.au-pida.org/pida-stakeholders> (accessed 10 January 2014).

meant to align all five AEC regions is fundamental and will require harmonisation. As argued in this research paper, the private sector should be involved at a policy and infrastructure conceptual stage due to its role as not only a financier but importantly as the primary consumer or client of infrastructure and services in Africa.

The PIDA comprises 51 programmes and projects designed to address sector-specific priority infrastructure deficits in energy, transport, ICT and trans-boundary water. PIDA's goal is to accelerate the implementation of regional and continental infrastructure by 2040 by implementing short-and priority projects by 2020, medium-term projects between 2020 and 2030, and long-term projects between 2030 and 2040.

As this research paper's focus is on the role of the private sector vis-à-vis regional trade, finance and investment in the pursuit of effective regional integration, only PIDA's programmes in relation to transport and (minimally) ICT will be considered. ICT (forming part of soft infrastructure) is critical for regional customs process digitisation and as an enabler of payment, settlement and clear:



and for the movement of capital. A recent study focused on the African  Transport Infrastructure Network (ARTIN) in relation to transport in Africa (the study).¹⁶⁰ The ARTIN consists of the Trans-African Highways plus 40 key corridors carrying 40% of Africa's international trade, 19 ports handling 70% of the continent's international trade, and 53 airports handling 90% of the continent's air traffic. In relation to ICT, the study focused on intercontinental and regional connectivity accounting for 90% of Africa's voice and data traffic.¹⁶¹


The study first reflected on Africa's key economic growth drivers and how Africa was doing relative to the rest of the developing world in economic indicators. In this regard, the study found that Africa has about 20% of the world's land mass and 16% of its population, but only 2.5% of its gross domestic product (GDP).¹⁶² As already discussed in this paper, the study

¹⁶⁰ PIDA, 2011 'Africa's Infrastructure Outlooks 2040', available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

¹⁶¹ PIDAFRICA, 'Study on Programme for Infrastructure Development in Africa (PIDA)', 2011 available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

¹⁶² UNDP (United Nations Development Programme) 'Human Development Report' (2010) United Nations: New York, York.

concluded that Africa is endowed with natural resources and these have historically been its main economic driver. Besides its mineral wealth, new economic drivers have emerged namely population growth and rapid urbanisation. The study found that the continent's population is projected to increase from 1 billion in 2010 to about 1.8 billion in 2040 (Figure 2.2)—much faster rate than for other continents—and to pass those of China in 2025 and India in 2030. Further, urbanisation is forecast to increase from 40% in 2010 to 56% in 2040, approaching but not reaching China's anticipated level of 68%.¹⁶³ United Nations estimates show that by 2040 the proportion of Africans aged 15–64 years in the world's population of this age group will reach 20%, second only to Asia (with 60%) and leaps ahead of Europe (8%) and the Americas (12%).¹⁶⁴ This age group is economically active and is primed to be the key drivers of consumption and production. Finally, eight African countries were among the world's 20 fastest-growing countries during 2005–09 namely Angola (1), Ethiopia (3), Uganda (6), Rwanda (9), Sudan (10), Mozambique (15), Tanzania (16), and Malawi (20).¹⁶⁵ Three of these, Mozambique (15), Tanzania (16), and Malawi (20) are in the SADC region.

Significantly, the study estimated that the growth rate for 53 African countries (GDP-weighted and expressed in U.S. dollars)  over in the 6.2% per year level between 2010 and 2040.¹⁶⁶ A growth rate as for the study implies that over a 30 year period, the GDP of African countries will be multiplied six-fold on average. In the same vein, the study estimated that 37 countries would show growth rates in excess of 5% per year on average for the period 2008– 2040. Of the 53 African countries,¹⁶⁷ 26 should record an average growth in excess of the continental average during this period, led by Ethiopia and Nigeria, with estimated growth rates of 7.8% and 7.6% per year, respectively; followed by Malawi (7.5%), Tanzania (7.3%), Mozambique and Benin (7.2%), and Angola (7.1%).

However, despite this positive economic outlook Africa continues to face a myriad of challenges including that it is highly fragmented, has a large number of landlocked countries

¹⁶³ A Leke, S Lund, C Roxburgh, and A van Wamelen 'What's Driving Africa's Growth' (2010) *McKinsey Quarterly*, June 2010.

¹⁶⁴ United Nations 'World Population Prospects: The 2010 Revision'. United Nations: New York. Available at <http://esa.un.org/unpd/wpp/index.htm> (accessed 10 January 2014).

¹⁶⁵ International Monetary Fund *Regional Economic Outlook*, 2011. Washington, DC.

¹⁶⁶ PIDAFRICA 'Study on Programme for Infrastructure Development in Africa (PIDA)', 2011 (page 11) available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

¹⁶⁷ The Republic of South Sudan was not in existence yet.

and generally poor transport and communication infrastructure. Further, Africa has over two-thirds of the world's least developed countries, 12 of which have no access to the sea.¹⁶⁸ It is no wonder therefore that the SADC's Protocol on Transport, Communications and Meteorology establishes a principle of the right of landlocked Member States to unimpeded access to and from the sea.¹⁶⁹ Interestingly, though South Africa is not a landlocked country, the Maputo Development Corridor expressly recognises that South Africa's economic hub – the Gauteng Province- is landlocked and therefore that a link to the Port of Maputo is vital for its (and the surrounding landlocked provinces) economic output to reach the region.

4.1.8 Transport Infrastructure

Infrastructure plays a key role in economic growth. In line with the statistics discussed at Chapter 2 (paragraph 2.4) of this paper, Calderón notes that Africa loses about 2% of its economic growth per year on account of inadequate infrastructure.¹⁷⁰ The road access rate in Africa is said to be only 34%, compared with 50% in other parts of the developing world, and transport costs are higher by up to 100% penetration rates are abysmally low at about 6%, compared to an average of 40%



In its forecast of future freight transport demand, the study estimated that transit traffic from landlocked countries will increase 10–14 times over the next 30 years. Expressed in tonnages, West Africa will see its transit traffic rise from 6 million tons to 65 million tons in 2040; Southern Africa increasing from 13 million to 148 million tons; and East Africa increasing from 10 million tons to 149 million tons (buoyed by Southern Sudanese exports through this region). Djibouti is anticipated to experience increases in transit traffic from 9 million tons to 76 million tons.

On a generalised basis, port tonnage is expected to grow at 6% to 6.8% per year, excluding large new mining projects and crude oil, and at 5.8 to 7.8% per year including new mining projects. Similarly, container traffic is expected to outpace total tonnage. Growth in container traffic is expected to average 10.6% per year to 2020 (including some suppressed

¹⁶⁸ United Nations Development Programme *Regional Integration and Human Development: A Pathway for Africa*, 2011. United Nations: New York.

¹⁶⁹ Article 3.2(b).

¹⁷⁰ C Calderón 'Infrastructure and Growth in Africa.' (2008) *AICD Working Paper 3, Africa Region, World Bank, Washington, DC*.

demand released by corridor improvements) and 7.9% from 2020 to 2040 on a sustained basis (with all suppressed demand released). The net result of this growth will be an increase in container traffic to 38 million 20-foot equivalent units (TEUs) by 2020 and 176 million TEUs by 2040, a 14-fold increase.

Therefore, it is a logical conclusion that as Africa’s economies grow as anticipated by the study underpinning PIDA, infrastructure demand and usage will also grow exponentially to enable that growth. The present state of infrastructure in Africa, particularly road infrastructure, is woefully inadequate to meet this anticipated growth or even half of it. As discussed at Chapter 2, Africa has severe construction and maintenance backlogs in relation to road infrastructure and the governments are unable to commit the requisite levels of funding for such construction and maintenance as that would necessitate rolling back certain domestic social welfare programmes. That could lead to social unrest and political instability. The study supports this view as it estimates that the total cost of inefficiencies in ARTIN operations and lack of maintenance was close to US \$175 billion in 2009, with about half made up of increased annual costs and half in the value of suppressed demand.¹⁷¹



PIDA submits that improvements in policies, institutional practices, and IT systems have the potential to greatly increase the efficiency and capacity of border posts, ports, railways, and airports. In the table below, PIDA’s analysis appears at first glance to focus only on the public sector – in support of its earlier criticised view of the private sector as only an infrastructure finance and maintenance partner.

Potential gains in capacity from policy changes and institutional actions

Mode	Type of policy action	Type of institutional change	% capacity increase
Ports and multimodal facilities	Eliminate constraints on containers for inland use and reduce stripping of	Developing inland container depots and dry ports to move container processing out of the ports, institute	10-30%

¹⁷¹ PIDAFRICA ‘Study on Programme for Infrastructure Development in Africa (PIDA)’, 2011 (page 12) available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

Mode	Type of policy action	Type of institutional change	% capacity increase
	containers in ports or inland depots	single window, re-engineer customs processes to reduce dwell times	
Railways	Restructure concession agreements to provide public funding for track improvement and rehabilitation.	Restructure concession agreements to support more equipment and rolling stock provision by private partners, and incentives for best practice management	100-500%
Border posts	Support single window, integrated border management and smart corridor technology to reduce border times	Implement One-Stop Border Posts and smart corridor technology	100-200%
Air navigation system / airports	Develop new means financing for satellite-based air navigation system	Implement satellite-based air navigation system and change of financing air navigation	10-30%






However PIDA implicitly acknowledges the role of the private sector (and expressly acknowledged in relation to railways) as well – though this implicit acknowledgment is simply not sufficient. As the RISDP correctly acknowledges

‘In those countries where the public sector sees it as mandatory to consult the private sector on policy, legislation and programmes that affect business, markets tend to be better regulated and developed and business environments are more attractive to both internal and external investors.’¹⁷²

Deeper integration of the private sector in PIDA is therefore essential and the role of the private sector should not be implicit, it must be expressly provided for and encouraged.

¹⁷² PIDAFRICA ‘Study on Programme for Infrastructure Development in Africa (PIDA)’, 2011 (page 12) available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

PIDA appears to be taking the principles of cooperation between the public and private sectors argued for in this paper and belatedly supported by the RISDP, backwards. However, this situation cannot be countenanced particularly considering that the same study underpinning PIDA found that four transport corridors are expected to experience demand of more than 15,000 vehicles per day by 2030.¹⁷³ This development will require the construction of modern four-lane motorways. Notably, among these transport corridors is the Maputo Development Corridor which has the deepest integration between the public and private sectors of all the other corridors. Further, nine border crossings are expected to exceed 2,000 heavy goods vehicles (HGVs) per day by 2040, with three reaching that level by 2030. This level of HGV traffic requires special corridor development with modern motorways and special truck facilities. The three priority corridors are the Djibouti, Northern, and North-South corridors.

On a continental level, PIDA correctly identifies the transport infrastructure backlogs and at a finance and investment level, correctly identified that it needs a credible market oriented institution like the AfDB as a partner in ct the private sector. However, PIDA is sorely lacking in forethought and depth ot adequately deal with how the private sector can be integrated into its program  does not envisage an engaged private sector which is a primary consumer of the infrastructure that it is trying to rehabilitate and/or construct, rather it lumps the entire private sector as an arms-length financier – which is not an accurate point of departure. PIDA is public-oriented and considers the AUC and the NEPAD Agency its primary partners. However, as argued throughout this paper (in relation to cross-border infrastructure) the private sector and the potential of public-private partnerships are also a primary partner as they are in the unique position of being consumers and potential financiers of these projects.

4.1.9 ICT Infrastructure

In a marked departure from this research paper’s analysis on the ICT sector,¹⁷⁴ the PIDA study found that Africa’s ICT sector will continue to show rapid growth over the coming

¹⁷³ These are the Trans-Maghreb, Abidjan-Lagos, Lagos-Douala, and Maputo Development corridors.

¹⁷⁴ See section 4.1.7 of this research paper for a fuller discussion.

decades, with the bulk of investment coming from private enterprise.¹⁷⁵ However, the study limited its scope of continental and regional infrastructure to end-to-end fibre optic cable capable of carrying data traffic from one country to a submarine cable landing station in another country, as well as networks that use national infrastructure to obtain better connectivity between two or more countries. In light of this limitation, the study's assertion that private enterprise will comprise the bulk of investment in the ICT sector appears to be doubtful, particularly as communications sectors are largely in public hands with the liberalisation process stuck in a political and regulatory quagmire. Nevertheless, the study proceeds to note that in order for investment in ICT to generate the greatest possible economic benefit, stimulate healthy competition with a view to bringing prices down and expand access to millions more Africans, five conditions need to be met. The study identifies these as:

- operators in every country must have access to intercontinental bandwidth through competitive gateways to submarine cable landing stations;
- the regional fibre optic infrastructure free of missing links;
- Africa's countries must complete communications reforms at the national level, eradicating the vestiges of public monopolies, expanding competition in the widest array of services, and enabling the private sector to redouble its already considerable investment in Africa's ICT infrastructure;
- the RECs must increase their capacity to help national governments harmonise their technical and regulatory practices along the lines already developed by the RECs and
- Africa must strive to develop its own internet exchange ports¹⁷⁶ and data centres to lower bandwidth costs.



The study notes that more than 90% of the infrastructure installed by mobile operators in Africa uses radio link technology.¹⁷⁷ This is because it is cheap and quickly installed, but

¹⁷⁵ PIDAFRICA 'Study on Programme for Infrastructure Development in Africa (PIDA)', 2011 (Page 26, Section 3.4) available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

¹⁷⁶ This is physical infrastructure through which Internet service providers exchange Internet traffic between their networks.

¹⁷⁷ PIDAFRICA 'Study on Programme for Infrastructure Development in Africa (PIDA)', 2011 (page 27) available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

also because private mobile operators are generally prevented by regulations from using other land-based methods. A marked feature of land-based communications (data and voice) in Africa is that it is dominated by *de facto* or *de jure* monopolies created or tolerated under many country's legal and regulatory frameworks. Where countries do not have strong competition law regimes to monitor these monopolies and the prices at which they sell access to their public-funded backbone infrastructure, it is rarely offered to private operators at a reasonable price. A case in point was Telkom's (South Africa's *de facto* monopoly land-based communications company which used to be a statutory monopoly) abuse of its dominance over a more than 10 year period during which it sought to drive out small private operators from the data market. Telkom was subsequently fined an amount of R449 million for its conduct by the South African competition authorities.¹⁷⁸

4.1.10 Conclusion

PIDA's conclusion that there is likely to be increasing demand for ICT services in Africa, particularly to support cross-border trade and investment flows (which this paper argues are essential components of regional integration initiatives), it is doubtful that the private sector can meaningfully promote land-based ICT technologies as telecommunications reforms still need to be undertaken at national level. However, private sector investors like Seacom are making investments in sea-based fibre-optic networks.¹⁷⁹



Much as the discussion on the Protocol on Transport, Communications and Meteorology, the telecommunications sector on the continent needs to undergo thorough economic analysis to understand its historical context and competitive pressure (including supply and demand trends) in order to refashion its regulatory framework, to have a more regional outlook. Further, as communications do affect issues of national security, it may have to be accepted that this is not a sector that can undergo complete liberalisation. Regardless, a lot more

¹⁷⁸ *Competition Commission v Telkom SA Ltd; Telkom SA Ltd v Competition Commission* (73/CR/Oct09) [2013] ZACT (13 February 2013). Available at <http://www.saflii.org/za/za/cases/ZACT/2013/9.html> (accessed 10 January 2014).

¹⁷⁹ SEACOM's network consists of multiple subsea cable systems that connect Africa to Europe, Asia & the Middle East. SEACOM is privately funded and over three quarter African owned. Ownership is 76.56% African, as follows: Industrial Promotion Services (26.56%), an arm of the Aga Khan Fund for Economic Development, Remgro Limited (25%), Convergence Partners (12.5%), Shanduka Group (12.5%) and the remaining 23.44% is held by Herakles Telecom LLC. Available at <http://seacom.mu/> (accessed 10 January 2014).

liberalisation in relation to data and intra-country connectivity can be accommodated. As the private sector has fewer concerns (if any) about national security than public utilities, this area again presents optimum opportunities for public-private partnerships and lessons from the private sector in relation to cross-border communications from the mobile communications industry can be shared. Significantly however, the Southern Africa region now has a framework agreement in place which not only recognises the integral role of the private sector in regional integration initiatives but one which goes further to set goals and timelines for its implementation. This is bolstered by the RISDP's acknowledgment that the SADC region's economy is 'evolving from a state led economy to a private sector-led economy'. This development cannot be overemphasised.



CHAPTER 4.2

A ROBUST PRIVATE SECTOR AND VISIONARY REGIONAL LEGAL ARCHITECTURE IN THE IMPLEMENTATION OF THE SADC'S REGIONAL INTEGRATION INITIATIVES

4.2.1 Introduction

As demonstrated through the discussions at Chapters 3 and 4.1 above, the SADC's record in successfully implementing its regional integration agenda is at best a chequered one. Notably however, it is clear from the discussions above that the SADC's implementation record has been dramatically better in instances where implementation initiatives involve deep partnership with the private sector. This paper has argued that the private sector should be involved from a policy development as well as a project implementation perspective.¹⁸⁰ This proposition makes intuitive sense and is the success of the Maputo Development Corridor initiative – the private sector primary beneficiary of successful regional integration initiatives. Furthermore, the private sector is the only stakeholder amongst sovereign States and civil society which has its sole purpose reaching as many consumers as possible at the lowest possible cost, using the least amount of resources and at the shortest possible time. This is the only way for it to be able to maximise profit. As such, the private sector's deep involvement in policy design and project implementation for regional integration is not a nice-to-have, it is vital to the success of the programme.



Geda and Kibret put it succinctly when they state that implementation of the various regional protocols often rests on 'the understanding, conviction, and confidence of the private sector' and as such 'an active involvement of this sector is crucial'.¹⁸¹ These authors proceed to argue that States should establish specific government entities to promote and administer economic integration at a country level to not only demonstrate their commitment to regional

¹⁸⁰ See Chapter 3, section 3.4 of this research paper.

¹⁸¹ A Geda and H Kibret 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA', 2002 (page 14, section 3.6) available at <http://www.soas.ac.uk/economics/research/workingpapers/file28853.pdf> (accessed 15 February 2014).

integration but also enhance the effectiveness of implementing the various protocols.¹⁸² Though cast in broad terms, this argument is congruent with this paper's argument at section 3.4 that the DFI network and the DFI's themselves ought to be lead partners in regional integration initiatives as they are market oriented.

4.2.2 The 'traditional' role of the private sector

The seminal expression of how the role of the private sector has been defined in the region is contained in PIDA and is captured thus: 'As a key partner in infrastructure development, the private sector plays a critical role in the implementation process, particularly in the financing, construction, operation and maintenance of infrastructure. In partnership with governments, many of the PIDA projects will be public-private partnership.'¹⁸³

This formulation of the private sector's role in infrastructure development in Africa as only a finance, construction and maintenance partnership limits the potential scope of robustness of the relationship between the public and tors. This problem appears to have its roots on countries' reluctance to create l bodies and transfer power to them as a sanctioning authority.¹⁸⁴ Geda and Kibr ete agreement with this paper's assertion that the SADC Secretariat's role and profile as a supra-national authority with power to deal directly with the private sector, note that the secretariats that are formed in regional communities do not have the legal power to force countries to fulfil their obligations – such as reducing tariff rates and other trade barriers in accordance to their commitments.¹⁸⁵

As argued in this paper, the private sector should be involved at a policy and infrastructure conceptual stage due to its role as not only a financier but importantly as the primary consumer or client of infrastructure and services in Africa.

¹⁸² A Geda and H Kibret 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA', 2002 (page 14, section 3.6) available at <http://www.soas.ac.uk/economics/research/workingpapers/file28853.pdf> (accessed 15 February 2014).

¹⁸³ PIDA 'About PIDA: PIDA Stakeholders', available at <http://www.au-pida.org/pida-stakeholders> (accessed 10 January 2014).

¹⁸⁴ A Geda and H Kibret 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA', 2002 (page 13, section 3.4) available at <http://www.soas.ac.uk/economics/research/workingpapers/file28853.pdf> (accessed 15 February 2014).

¹⁸⁵ A Geda and H Kibret 'Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA', 2002 (page 13, section 3.4) available at <http://www.soas.ac.uk/economics/research/workingpapers/file28853.pdf> (accessed 15 February 2014).

4.2.3 Conclusion

As stated at section 1.3, Southern Africa's regional trade landscape is characterised by inefficient and costly rules and cross-border trade procedures due to poorly designed and implemented regional integration initiatives. As demonstrated in the discussions on the SADC Legal Framework this problem is exacerbated by the lack of investment in hard infrastructure in the region.¹⁸⁶

The lack of investment in infrastructure ultimately results in higher prices for consumers in Southern Africa as cross border traders have to factor in duplicate customs costs, higher vehicle maintenance costs as well waiting time at border posts. It was argued that taking into account the significant infrastructure development backlog in the region and in domestic markets, public actors simply did not possess the necessary funds to self-fund large infrastructure projects and thereby improve consumer welfare in the region.



In this context, it is therefore vital for the issues and challenges presented by public-private partnerships to be properly understood and resolved to allow the private sector to assist in the region's policy formulation and project implementation initiatives. Ultimately the private sector is a primary beneficiary of a successful regional integration agenda as it is interested in maximising profit by having access to larger markets at the shortest possible time and at the least cost. Thus there is congruence between the requirements of the public sector (capital) and those of the private sector (identification of priority projects, efficiency of implementation and access to larger markets). However, lack of a systemic and institutional approach to the relationship between the public and private sectors leads to a disjointed approach which wastes scarce resources. The case of the Maputo Development Corridor has demonstrated the attractiveness of this proposition – each stakeholder contributes what they know best in a coordinated fashion.

¹⁸⁶ See Chapters 3 and 4.1 of this research paper for a fuller discussion.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS FOR POLICY CHOICES

5.1 Introduction

Chapter 5 will outline the conclusions and recommendations drawn from this research paper and the preceding chapters. The focus of this chapter will be on policy recommendations on how the existing regional integration initiatives can be improved in order to realise the stated benefits of regional integration.

5.2 Conclusions

Chapter 2 demonstrated the enormity of the infrastructure investment gap in Southern Africa. In so doing, Chapter 2 concisely presented the levels of investment required to address the identified investment gap in a manner supported this paper's thesis that deeper integration of the private sector in the form of public-private partnerships is the only viable alternative to infrastructure development in Southern Africa.



Having considered the infrastructure challenge, Chapter 3 (sections 3.3 and 3.4) undertook an analysis of the protocols and associated documents that create the framework for private sector participation in SADC programmes. Chapter 3 found that in order for the private sector (through the vehicle of public-private partnerships) to meaningfully participate in policy design and project implementation in the region, the current protocols and strategy documents require amendment in a manner that would change their character from State-led initiatives to public-private sector led initiatives.

In this regard, Chapters 4.1 and 4.2 considered the blueprint regional and continental integration strategies. The regional integration strategy, the RISDP, was found to be on the correct trajectory insofar as it recognised the private sector as not merely a provider of finance and other services in regional integration initiatives. However, implementation of the RISDP was found to be inconsistent and as such, its impact on facilitating regional integration was hampered. The continental integration strategy, PIDA, was criticised for its formulation of the private sector's role in infrastructure development in Africa as only a

finance, construction and maintenance one. It was argued that such a formulation limits the potential scope of robustness of the relationship between the public and private sectors.

Chapter 4.2 identified the root of the discord between the RISDP and PIDA as countries' reluctance to create supra-national bodies and transfer power to them as sanctioning authorities. Thus Chapter 4.2 argued that the SADC Secretariat's role and profile should be reformed such that it becomes a supra-national authority with power to deal directly with the private sector and legal power to force countries to fulfil their obligations – such as reducing tariff rates and other trade barriers in accordance with their commitments.

Chapter 4.2 found that ultimately the private sector is the primary beneficiary of a successful regional integration agenda as it stands to benefit most from having access to larger markets at the shortest possible time and at the least cost. Thus there is congruence between the requirements of the public sector (capital) and those of the private sector (identification of priority projects, efficiency of implementation and access to larger markets) – hence the argument for deeper partnerships between regional public and private sectors in a streamlined manner.



5.3 Recommendations for Policy Choices – a meaningful partnership

This paper argued that the RISDP's recognition that a developed private sector; complemented by a dynamic public-private partnership environment, encourages better orientation of the economy towards meeting human needs, should permeate all of the SADC's protocols and strategies. SADC Member States should recognise that the private sector is not merely another stakeholder group which needs to be consulted on its views on certain projects – it is a vital partner which must understand, have conviction and confidence in the projects in order to (i) release the necessary funding and (ii) more importantly take the lead in project implementation.

This third way requires a rejection of the traditional approach to the private sector as merely a financing partner.

Furthermore, States need to streamline their interaction with the private sector at a national level. As noted in this paper, SADC Member States are at different levels of economic

development and from a financial markets perspective, their acceptability as partners and therefore their ability to raise affordable capital in the open market differs considerably. The ability of States to be able to access the capital markets is affected by a range of factors including political issues, social issues and perceptions of corruption etc. However, States can insulate the regional integration agenda from these influences by creating development finance institutions which are operated on purely business principles in pursuit of the regional integration agenda. These DFI's would rely on their own balance sheets to raise finance and as publicly-owned private entities, would be charged with being the lead public partners with the private sector on project identification, implementation and maintenance. This approach also means that a significant amount of regional project expertise will be cultivated and housed within the DFI's rather than it being scattered across fourteen or more Member States. This institutional memory will be critical in building trust and rapport between the public and private sectors as long-term partners rather than *ad-hoc* project partners. Where required due to the size and potential exposure of private sector partners in a project, individual member states could still be required to underwrite a project. However, the primary responsibility to engage with the private sector and negotiate remains with the DFI or the DFI network.



Perhaps the most far-reaching policy recommendation is that States need to review the role and status of their Regional Economic Community Secretariats – these need to be enhanced to have the requisite authority to act independently of member states and sufficient legal and coercive power to monitor member states' implementation of regional protocols and strategies. The SADC Secretariat, in particular, needs to be reformed as a supra-national body which has the requisite power to sanction Member States that do not fulfil their obligations in terms of the Treaty or the Protocols. Essentially, this requires SADC Member States to cede some of their sovereignty to the Secretariat. It is submitted that such reforms would streamline interaction between the private sector and the regional public sector through one entry point and will bring greater predictability, certainty and institutional stability to relations between the private sector and member states at a regional level. Currently, the private sector is required to engage with each Member State as well as with the Secretariat.

Combined, the enhancement of the Secretariat's role to an autonomous body with powers of representation and the DFI Network or individual DFI's as the primary entry points to engaging with the private sector in the region, there will be greater focus and impetus to regional integration initiatives. This level of deep cooperation between the public and private

sectors, as ably demonstrated by the Maputo Development Corridor Initiative, leads to a development of trust amongst the various partners and all partners begin to understand issues from a common perspective. That, in turn, leads to resources and efforts being expanded in a focused and mutually supportive manner rather than the disjointed manner which has characterised regional integration initiatives in the region to date.



BIBLIOGRAPHY

Books

Buthelezi S *Regional Integration in Africa: Prospects & Challenges for the 21st Century Vol. 1* (2006) East London: Ikhwezi.

Devenish GE *Interpretation of Statutes* (1996) Cape Town: Juta.

Gathii JT *African Regional Trade Agreements as legal regimes* (2011) Cambridge University Press" New York.

Hancock K *Regional Integration: Choosing Plutocracy* (2009) New York: Palgrave.

International Monetary Fund *Regional Economic Outlook*, 2011. Washington: International Monetary Fund.

Jakobeit C 'The theoretical dimensions of regional integration' in Dieter H (ed) *The regionalization of the world economy and consequences for Southern Africa*: Marburg: Deutsche Stiftung fur internationale Entwicklung.

Kritzinger-van Niekerk L and Moreira EP *Regional Integration in Southern Africa: Overview of recent developments* (2002) Washington: World Bank.

Lake DA *International Political Econo.  ives on Global Power and Wealth* (4ed) 2000 London: Routledge.

Lee MC *The Political Economy of Regionalism in Southern Africa* (2003) Lansdowne: University of Cape Town.

Sall A *Africa 2025: What possible futures for Sub-Saharan Africa?* (2003) Pretoria: UNISA Press.

United Nations Development Programme *Regional Integration and Human Development: A Pathway for Africa*, 2011 New York: United Nations.

Wittman AD *Economic Analysis of the Law – selected readings* (2003) USA: Blackwell Publishers.

Wuite R *The South African Dictionary of Finance* (2009) Johannesburg: Rollerbird Press.

Case Law

Campbell and Another v Republic of Zimbabwe (SADC (T) 03/2009) [2009] SADCT 1 (5 June 2009).

Competition Commission v Telkom SA Ltd; Telkom SA Ltd v Competition Commission (73/CR/Oct09) [2013] ZACT (13 February 2013).

Government of the Republic of Zimbabwe v Fick and Others (5) SA 325 (CC).

Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe (2/2007) [2008] SADCT 2 (28 November 2008).

Shuttleworth v South African Reserve Bank and Others [2013] 3 All SA 625 (GNP).

Treaties, Conventions and Key Strategies

Constitutive Act of the African Union, 2001

Protocol Against Corruption, 2001

Protocol on Finance and Investment, 2006

Protocol on Energy in the Southern African Development Community Region, 1996

Protocol on Legal Affairs in the Southern African Development Community Region, 2000

Protocol on Trade in Services, 2012

Protocol on Trade in the Southern African Development Community Region, 1996

Protocol on the Development of Tourism in the Southern African Development Community Region, 1998

Protocol on Science Technology and Inn



Protocol on Trade - Sanitary and Phyto-

Protocol on Transport, Communications and Meteorology in the Southern African Development Community Region, 1996

Regional Infrastructure Development Master Plan: Transport Sector Plan, 2012

Southern African Development Community Regional Indicative Strategic Development Plan, 2001

Treaty of the Southern African Development Community, 1992

Theses

Adera JO A critical analysis of the role of the private sector and civil society in regional integration in East Africa' (2009) University of the Western Cape.

Ngenyeh KD 'Regional integration in Southern Africa with a specific focus on the challenge of multiple membership, using SADC as a case study' (2009) University of the Western Cape.

Journal Articles

Acemoglu, Daron, Simon Johnson, and James A. Robinson 'When Does Policy Reform

Work? The Case of Central Bank Independence.’ (2008) *Brookings Papers on Economic Activity, Spring 2008*.

Barro, Robert J., and David B. Gordon ‘A Positive Theory of Monetary Policy in a Natural Rate Model.’ (1983) 4 *Journal of Political Economy*.

Cesar Calderón ‘Infrastructure and Growth in Africa.’(2008) *AICD Working Paper 3, Africa Region, World Bank, Washington, DC*.

Draper P, Alves P and Kalaba M ‘South Africa’s trade diplomacy: Implications for Regional Integration’ in ‘Regional Integration in Southern Africa’, Vol. 1 (2006) *Friedrich Ebert Foundation*.

Kalaba M and Tsedu M ‘Implementation of the SADC Trade Protocol and the Intra-SADC Trade Performance’ (2008) *Southern African Development Research Network*.

Leke, Acha, Susan Lund, Charles Roxburgh, and Arend van Wamelen ‘What’s Driving Africa’s Growth’ (2010) *McKinsey Quarterly, June 2010*.

Rogoff, Kenneth S ‘The Optimal Degree of Commitment to an Intermediate Monetary Target.’ (1985) 4 *Quarterly Journal of Economics*.

Position Papers

African Development Bank ‘Southern Africa Regional Integration Strategy Paper 2011 – 2015’ (2011) African Development Bank



Evengelista M ‘Implementation challenges for the SADC FTA: tariff and non-tariff barriers’ (2008) *Proceedings of the Fifth Southern African Forum on Trade (SAFT)* (2008).

Kalenga P ‘Regional Integration in SADC: Retreating or forging ahead? (2012) *TRALAC*. Trade Law Centre ‘The Regional Indicative Strategic Development Plan: SADC’s trade-led integration agenda. How is SADC doing?’ (2012) *TRALAC*.

UNCTAD ‘Economic Development in Africa Report 2013’ *Intra-African trade: Unlocking private sector dynamism* (2013).

Studies

International Finance Corporation ‘Doing business 2010 – Southern African Development Community (SADC)’ (2010) The International Bank for Reconstruction and Development / The World Bank: Washington.

International Finance Corporation ‘Doing business in a more transparent world. Regional Profile: Southern African Development Community (SADC)’ (2012) The International Bank for Reconstruction and Development / The World Bank: Washington.

Internet

African Development Bank ‘Southern Africa Regional Integration Paper: 2011 – 2015’

available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2011-2015%20-%20Southern%20Africa%20-%20Regional%20Integration%20Strategy%20Paper.pdf> (accessed 23 March 2013).

African Development Bank ‘Private Equity Investment in Africa: In Support of Inclusive and Green Growth’, available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Private%20Equity%20Investment%20in%20Africa%20-%20In%20Support%20of%20Inclusive%20and%20Green%20Growth.pdf> (accessed 9 January 2014).

African Tax Administration Forum ‘African Development Bank, IFC and African Development Bank Sign ISDA Master Agreement to Expand Local Currency Finance’ available at <http://content.ataftax.org/Ataf/KodiKaticontentWeb.nsf/0/25200BB5285664A242257AC9004DBE95?OpenDocument> (accessed 4 January 2014).

Ahmed K ‘An analysis of Regional Integration in Southern Africa: A South African Perspective’ available at http://www.tralac.org/wp-content/blogs.dir/12/files/2011/uploads/Ahmed_Final_20110614_edu.pdf . (accessed 23 March 2013).

Asian Development Bank ‘The Role of the Private Sector in Promoting Regional Integration: Trade and Cross-Border Infrastructure’ <http://www.adb.org/news/speeches/role-private-sector-promoting-regional-integration-and-cross-border-infrastructure> (accessed 23 March 2013).



Bhagwati J ‘US Trade Policy: the infatuation with FTAs’ available at http://www.academiccommons.columbia.edu/download/.../econ_9495_726.pdf (accessed 9 January 2014).

BDLive ‘Stanlib launches African infrastructure equity fund’, available at <http://www.bdlive.co.za/africa/africanbusiness/2013/06/11/stanlib-launches-african-infrastructure-equity-fund> (accessed 9 January 2014).

Bekele S ‘Contribution of the Private Sector to Regional Integration and Success Stories’ available at <http://cbsintl.files.wordpress.com/2007/12/paper-for-commu-2000-on-private-sector-and-regional-integration-sophia-bekele.pdf> (accessed 23 March 2013).

Bua News ‘SADC launches free trade area’, available at <http://www.southafrica.info/africa/sadc-fta.htm> (accessed 21 March 2013).

C Bathembu ‘Zuma tables Africa infrastructure report’ *SA News.co.za* 29 January 2014, available at <http://www.sanews.gov.za/africa/zuma-tables-africa-infrastructure-report> (accessed 1 March 2014).

de Matons JG ‘Facilitation of Transport and Trade in Sub-Saharan Africa: A Review of International Legal Instruments’ available at <http://www4.worldbank.org/afr/ssatp/Resources/SSATP-WorkingPapers/SSATPW73.pdf> (accessed 23 March 2013).

Draper P and Alves P ‘South Africa’s International Trade Policy: Implications for Regional Integration’ available at <http://library.fes.de/pdf-files/bueros/botswana/04119.pdf> (accessed 23 March 2013).

Finance Learners ‘Largest Stock Exchanges in Africa’, available at <http://financelearners.blogspot.com/2010/12/largest-stock-exchanges-in-africa.html> (accessed 4 January 2014).

H Jalilian, C Kirkpatrick and D Parker ‘The impact of regulation on economic growth in developing countries: A cross-country analysis’(2006) 11 – 16 available at <https://dspace.lib.cranfield.ac.uk/bitstream/1826/1455/1/Impact%2520of%2520regulation-Economic%2520growth-March06.pdf> (accessed 21 March 2013).

IT Web ‘SARS customs system to reduce red tape’, available at http://www.itweb.co.za/index.php?option=com_content&view=article&id=66814 (accessed 30 December 2013).

James Hodge and Keith Weeks ‘The Economics of Telecommunications and Its Regulation’, available at <http://thornton.co.za/resources/telelaw5.pdf> (accessed 6 January 2014).

JSE Limited ‘JSE Africa Strategy’, available at <http://www.jse.co.za/How-To-List/Africa-Board.aspx> (accessed 4 January 2014).

KPMG, 2013 ‘Planned infrastructure expenditure and the NDP: Mind the gap’, available at <http://www.kpmg.com/ZA/en/IssuesAndPublications/Documents/Mind%20the%20gap.aspx> (accessed 19 December 2013).



MCLI, ‘MCLI Corporate Profile’, available at <http://www.mcli.co.za/mcli-web/mcli/aboutmcli.htm> (accessed 6 January 2014).

NEPAD ‘The Contribution of the Private Sector to the Implementation of the New Partnership for Africa’s Development (NEPAD)’, available at http://www.un.org/africa/osaa/reports/English_The%20contribution%20of%20the%20private%20sector%20to%20...NEPAD%20June%202006.pdf (accessed 23 March 2013).

Nkosi ZM ‘Statement from the SADC Private Sector on Regional Economic Integration’ available at <http://www.busa.org.za/docs/SADC%20SUMMIT%20SPEECH-MR%20NKOSI.pdf> (accessed 23 March 2013).

PIDAFRICA, ‘Study on Programme for Infrastructure Development in Africa (PIDA)’, available at <http://www.pidafrica.org/Africa%20Infrastructure%20Outlook%202040.pdf> (accessed 10 January 2014).

Programme for Infrastructure Development in Africa ‘PIDA’ available at <http://www.aupida.org/> (accessed 19 December 2013).

SADC ‘Private Sector Involvement Strategy in Customs Matters’, available at http://www.sadc.int/files/2213/7415/0061/Private_Sector_Involvement_Strategy.pdf (accessed 30 December 2013).

SADC ‘SADC Private sector workshop on regional integration’ available at <http://www.busa.org.za/docs/SADC%20private%20sector%20workshop%20final%20outcome.pdf> (accessed 23 March 2013).

SAIIA ‘Implementing Development Corridors: Lessons from the Maputo Corridor’, available at <http://www.saiia.org.za/itpgooglesearch?gsquery=maputo+corridor> (accessed 6 January 2014).

SAIIA ‘PERISA Case Study 1 Private Sector The Non-Tariff Barrier Monitoring Mechanism’ (2013), available at <http://www.saiia.org.za/news/new-publication-series-the-political-economy-of-regional-integration-in-africa> (accessed 14 August 2013).

South African National Treasury – PPP Unit ‘Standardised Public-Private Partnership Provisions’, available at http://www.ppp.gov.za/Legal%20Aspects/Standardised%20PPP%20Provisions/National%20Treasury%20PPP%20Practice%20Note%20No%201%20of%202004;%20Standardised%20PPP%20Provisions;%20First%20Issue;%2011%20March%202004_1.pdf (accessed 9 January 2014).

Tech Central ‘SA drags customs into 21st century’, available at <http://www.techcentral.co.za/sa-drags-customs-into-21st-century/43448/> (accessed 30 December 2013).

The African Capacity Building Foundation  Private Sector Consultative Forum 2012: The Role of Private Sector in Integration in Africa’ available at <http://www.africa2point0.org/acbf/wp-content/uploads/2012/05/Concept-Note-ACBF-Private-Sector-Pledging-Conference-Final1.pdf> (accessed 23 March 2013).

The Economic Times ‘Changing global trade patterns’, available at http://articles.economictimes.indiatimes.com/2010-05-14/news/27606822_1_global-trade-manufacturing-exports-world-trade (accessed 21 March 2013).

The Herald ‘Southern Africa: Regional Leaders Permanently Disband SADC Tribunal’ available at <http://allafrica.com/stories/201208210893.html> (accessed 2 January 2014).

TRAC, ‘Maputo Corridor (objectives and benefits)’ available at http://www.tracn4.co.za/index.php?option=com_content&view=article&id=53&Itemid=91 (accessed 6 January 2014).

Tralac ‘Private and public sectors announce first ever Joint Dialogue Session’, available at <http://www.tralac.org/2013/09/26/private-and-public-sectors-announce-first-ever-joint-dialogue-session/> (accessed 9 January 2014).

Tribune ‘African investors set to explore \$622 billion pension funds’, available at [http://tribune.com.ng/news2013/index.php/en/business-package/2012-10-29-11-35-35/tribune-business/item/19036-african-investors-set-to-explore-\\$622-billion-pension-funds.html](http://tribune.com.ng/news2013/index.php/en/business-package/2012-10-29-11-35-35/tribune-business/item/19036-african-investors-set-to-explore-$622-billion-pension-funds.html) (accessed 4 January 2014).

United Nations 'World Population Prospects: The 2010 Revision', available at <http://esa.un.org/unpd/wpp/index.htm> (accessed 10 January 2014).

